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**Texas Agricultural Extension Service**  
The Texas A&M University System

# **Texas Laws and Regulations: Pesticide, Herbicide and Right-to-Know**

TEXAS STATE DEPOSITORY

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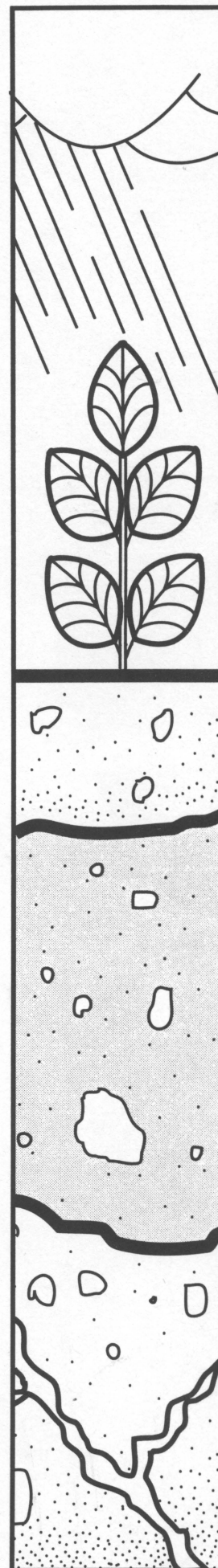
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# CHAPTER 76. PESTICIDE LAW

## Subchapter A. General Provisions

### 76.001. Definitions

In this chapter:

- (1) *Active ingredient* means:
  - (A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;
  - (B) in the case of a plant regulator, an ingredient that through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or the product of an ornamental or crop plant;
  - (C) in the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or
  - (D) in the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue.
- (2) *Animal* means a vertebrate or invertebrate species, including man, other mammals, birds, fish, and shellfish.
- (3) *Antidote* means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid.
- (4) *Defoliant* means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- (5) *Desiccant* means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- (6) *Device* means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than man or a bacteria, virus, or other micro-organism on or in living man or other living animals. The term does not include equipment sold separately from a pesticide.
- (7) *Distribute* means offer for sale, hold for sale, sell, barter, or supply.
- (8) *Environment* includes water, air, land, plants, man, and other animals living in or on water, air, or land, and the interrelationships that exist among them.
- (9) *Equipment* means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply a pesticide to land or to anything that may be inhabiting or growing or stored on or in the land. The term does not include a pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.
- (10) *Fungus* means a non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, or bacteria, but not including a non-chlorophyll-bearing thallophyte on or in living man or other living animals or on or in a processed food, beverage, or pharmaceutical.
- (11) *Inert ingredient* means an ingredient that is not an active ingredient.
- (12) *Insect* means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. The term includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.
- (13) *Label* means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.
- (14) *Labeling* means a label or any other written, printed, or graphic matter prepared by a registrant:
  - (A) Accompanying the pesticide or device at any time; or
  - (B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides.
- (15) *Land* means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation.
- (16) *License use category* means a classification of pesticide use based on the subject, method, or place of pesticide application.

- (17) *Nematode* means an invertebrate animal of the phylum Nematelminthes and class Nematoda (an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle) inhabiting soil, water, plants, or plant parts.
- (18) *Pesticide* means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- (19) *Plant regulator* means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant, but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.
- (20) *Regulatory agency* means a state agency with responsibility for certifying applicators under Subchapter E of this chapter.
- (21) *Restricted-use pesticide* means a pesticide classified as a restricted-use pesticide by the Environmental Protection Agency.
- (22) *Thallophyte* means a non-chlorophyll-bearing plant of a lower order than mosses and liverworts.
- (23) *Weed* means any plant that grows where not wanted.

#### **76.002. Pests**

The department shall determine what organisms constitute pests for purposes of this chapter and may include in the list of pests:

- (1) any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or
- (2) any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in living man or other living animals.

#### **76.003. State-Limited-Use Pesticides**

- (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.
- (b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Natural Resource Conservation Commission based on the impact of the pesticide's use on water quality.
- (c) The department shall formally request an opinion regarding impact on water quality from the Texas Natural Resource Conservation Commission during department consideration of any amendments to the current list of state-limited-use pesticides.
- (d) At the direction of the Texas Natural Resource Conservation Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall add any pesticide to the state-limited-use list, and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.
- (e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:
  - (1) with permission of the department;
  - (2) under direct supervision of the department in certain areas under certain conditions; or
  - (3) in specified quantities and concentrations.
- (f) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

#### **76.004. Department Rules**

- (a) After notice, the department shall conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter. Thereafter, the department may adopt rules for carrying out the provisions of this chapter, including rules providing for:
  - (1) the collection, examination, and reporting of records, devices, and samples of pesticides;



- (2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers;
  - (3) labeling requirements for pesticides and devices required to be registered under this chapter; and
  - (4) compliance with federal pesticide rules and regulations.
- (b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with rules developed for the protection or enhancement of water quality by the Texas Natural Resource Conservation Commission pursuant to recommendations of the Groundwater Protection Committee.

#### **76.005. Notice of Hearing**

- (a) Before adopting a rule under this chapter, the department or a regulatory agency shall publish notice of a public hearing in three newspapers of general circulation throughout the state. The notice must include the following information relating to the hearing:
- (1) the time;
  - (2) the place;
  - (3) the subject matter;
  - (4) a general statement of the proposed action; and
  - (5) the class or group of persons to be directly affected.
- (b) Notice must be published under this section before the 10th day preceding the day of the hearing.

#### **76.006. Pesticide Examination and Testing**

- (a) The department may contract with a state college or university, state agency, or commercial laboratory for examination of a pesticide. The department shall let contracts with commercial laboratories under this subsection on the basis of competitive bidding.
- (b) The department shall make or provide for sample tests of a pesticide on request and may charge and collect a fee for the tests in an amount necessary to cover expenses incurred in making or providing for the tests.

#### **76.007. Interagency Cooperation**

- (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U. S. Environmental Protection Agency or any federal agency responsible for implementation of federal pesticide law, the department shall:
- (1) register pesticides for use in Texas;
  - (2) adopt lists of state-limited-use pesticides;
  - (3) provide for training, certification, and licensure of all classes of pesticide applicators;
  - (4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and
  - (5) adopt rules to carry out the provisions of this chapter.
- (b) The Texas Natural Resource Conservation Commission shall have principal authority to regulate and control water pollution.
- (c) The department shall seek advice from the Texas Natural Resource Conservation Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.
- (d) The department shall give written notice to the Texas Natural Resource Conservation Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Natural Resource Conservation Commission may proceed with an investigation of possible violation of the Water Code.
- (1) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.
  - (2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.
  - (3) The foregoing remedies shall not be mutually exclusive.

- (e) The Texas Natural Resource Conservation Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.
  - (1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.
  - (2) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the Texas Natural Resource Conservation Commission shall seek the remedies provided by the Water Code.
  - (3) The foregoing remedies shall not be mutually exclusive.
- (f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.
- (g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

#### **76.008. Exemption**

Sections 76.007, 76.104-76.106, 76.108-76.117, 76.151(b), 76.151(c), 76.154(b), 76.155, 76.181, 76.182, 76.184, and 76.201(d)(1) do not apply to a person who is regulated by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes).

#### **76.009. Agriculture Resources Protection Authority**

- (a) The Agriculture Resources Protection Authority is an agency of state government. The authority is composed of the following members:
  - (1) the director of the Texas Agricultural Experiment Station;
  - (2) the dean of the College of Agricultural Sciences of Texas Tech University;
  - (3) the dean of The University of Texas School of Public Health at Houston;
  - (4) the director of the environmental epidemiology program of the Texas Department of Health;
  - (5) the chief of the groundwater conservation section of the Texas Natural Resource Conservation Commission;
  - (6) the director of the Institute for International Agribusiness Studies of Prairie View A&M University;
  - (7) one person appointed by the governor to represent the interest of consumers;
  - (8) a producer of agricultural products appointed by the governor;
  - (9) the executive director of the Texas Structural Pest Control Board;
  - (10) the executive director of the State Soil and Water Conservation Board;
  - (11) a person appointed by the governor and licensed by the department as a commercial, noncommercial, or private applicator;
  - (12) a person appointed by the governor and licensed by the department as a pesticide dealer or involved in the development or manufacture of agricultural chemicals;
  - (13) a person appointed by the governor and employed as a farm worker or serving as a representative of farm workers;
  - (14) a person appointed by the governor and associated with an organization primarily engaged in environmental conservation or protection efforts; and
  - (15) the commissioner of agriculture.
- (b) A person appointed by the governor under Subdivision (7), (8), (11), (12), (13), or (14) of Subsection (a) of this section serves a two-year term ending on February 1 of each odd-numbered year. A vacancy in one of those positions shall be filled by appointment by the governor for the unexpired term. All appointments made by the governor under this section must be with the advice and consent of the senate.
- (c) The governor shall designate the presiding officer of the authority.
- (d) The authority shall meet quarterly and at the call of the presiding officer or a majority of the members.

- (e) A member may not receive compensation for service as a member of the authority. A member is entitled to reimbursement for actual and necessary expenses incurred in the performance of the functions of the authority, subject to any limitations on reimbursement provided by the General Appropriations Act.
- (f) The delegation of functions under this section is designed to avoid overlapping responsibilities, to provide a means for all involved agencies to participate in the regulation of pesticides, and to clarify various areas of responsibility.
- (g) The authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Natural Resource Conservation Commission, and the Texas Structural Pest Control Board. Notwithstanding any other provision of this code or of any other law, the authority may:
  - (1) adopt any rule relating to any duty of the authority;
  - (2) review and make comments regarding any rule relating to pesticides that is proposed by an agency for which the authority is the coordinating body;
  - (3) cooperate with and advise the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Natural Resource Conservation Commission, the Texas Structural Pest Control Board, and any other state agency that may be concerned with the regulation of pesticides and notify those agencies of any rule the authority intends to adopt;
  - (4) collect, analyze, and disseminate information necessary for the effective operation of all existing or contemplated programs regulating pesticides;
  - (5) provide professional advice to private agencies and citizens of this state on matters relating to pesticides in cooperation with other state agencies, with professional groups, and with either state or private educational institutions;
  - (6) accept gifts, devises, and bequests and, with the approval of the governor, comply with the terms and conditions of any grant to accomplish any of the purposes of the authority;
  - (7) inform and advise the governor on matters involving pesticides and prepare and recommend to the governor and to the legislature any legislation the authority considers proper for the management and control of pesticides; and
  - (8) make annual reports to the governor and the appropriate legislative oversight committees.
- (h) A member of the authority by a written statement may designate a person to execute any responsibility of the member including voting.
- (i) The authority shall develop and implement policies that provide the public with a reasonable opportunity to appear before the authority semiannually to comment on the status of the state's pesticide regulation efforts.
- (j) The commissioner shall:
  - (1) as necessary, employ personnel as the duties of the authority may require and to the extent of legislative appropriations to the authority;
  - (2) keep an accurate and complete record of all authority meetings and hearings of the authority and maintain legal custody of all books, papers, documents, and other records of the authority;
  - (3) administer this chapter and Chapters 75 and 125 of this code; and
  - (4) assign, reassign, or delegate the administrative and enforcement functions assigned to the commissioner by this subsection or by rules or policies established under this subsection to one or more of the divisions or other units within the department or to one or more employees of the department.
- (k) The authority shall adopt rules requiring quarterly submission to the authority by the department, State Soil and Water Conservation Board, Texas Agricultural Extension Service, Texas Department of Health, Texas Natural Resource Conservation Commission, and the Texas Structural Pest Control Board of a report regarding each agency's pesticide regulatory enforcement activity.
  - (l) The authority shall review and make comments regarding the information received by the authority under Subsection (k). The authority shall make its comments available to the public.
- (l) The department, State Soil and Water Conservation Board, Texas Agricultural Extension Service, Texas Department of Health, Texas Natural Resource Conservation Commission, and the Texas Structural Pest Control Board shall provide the authority with sufficient opportunity to review and comment on the strategic plan and biennial appropriation request of each agency, and any revision of a plan or request, before submission of a plan or request to the legislature.

## **Subchapter B. Labeling**

### **76.021. Labeling Information**

- (a) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:
  - (1) the name, brand, or trademark under which the pesticide is distributed;
  - (2) the name and percentage of each active ingredient and the total percentage of inert ingredients;
  - (3) directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;
  - (4) if the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;
  - (5) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;
  - (6) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and
  - (7) a clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.
- (b) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.
- (c) The label bearing the ingredient statement under Subsection (a) (2) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

### **76.022. Conspicuous Lettering**

Any word, statement, or information required by this chapter to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary conditions of use.

### **76.023. Misbranded Pesticide or Device**

- (a) A pesticide or device is misbranded if:
  - (1) its labeling bears a statement, design, or graphic representation relating to the pesticide or device, or the ingredients of either, that is false or misleading in any particular;
  - (2) it is an imitation of or is distributed under the name of another pesticide or device; or
  - (3) it is not conspicuously labeled in accordance with Section 76.022 of this code.
- (b) A pesticide is misbranded if:
  - (1) its labeling bears any reference to registration under this chapter, unless the reference is required by a rule adopted under this chapter;
  - (2) it does not bear a label as required by Section 76.021 of this code; or
  - (3) its label does not bear information as required by Section 76.021 of this code or a rule adopted under this chapter.

## **Subchapter C. Registration**

### **76.041. Registration Required**

- (a) Except as provided by Subsection (b), (c), or (d) of this section, before a pesticide is distributed in this state or is delivered for transportation or is transported in intrastate commerce or between points within this state through a point outside the state, it must be registered with the department. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.
- (b) Registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under this chapter.



- (c) Registration is not required for a chemical compound being used only to develop plot data as to the possible pesticidal action of the chemical.
- (d) Unless otherwise required by department rule, registration is not required for a pesticide that is exempt from registration with the United States Environmental Protection Agency under federal law.

#### **76.042. Contents of Regustration Application**

- (a) The application for registration of a pesticide shall include:
  - (1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;
  - (2) the name of the pesticide;
  - (3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;
  - (4) the use classification, whether for restricted or general use, as provided by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or by a rule adopted under that Act;
  - (5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and
  - (6) other information required by the department for determining the eligibility for registration.
- (b) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.
- (c) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under federal law or for which federal or state restriction on use are being considered.
- (d) A person located outside this state, as a condition to registration of a pesticide, shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

#### **76.043. Expiration and Renewal**

- (a) Registration of a pesticide expires on the second anniversary of the date of its approval or renewal except that the department shall by rule adopt a system under which registrations expire on various dates during the year.
- (b) A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal.
- (c) A registration in effect on its expiration date for which a renewal application has been filed and renewal fee has been paid continues in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

#### **76.044. Fees**

- (a) The department shall charge a fee, as provided by department rule, for each pesticide to be registered. The fee must be submitted with an application for registration or renewal of registration.
- (b) A person who fails to apply for renewal of registration on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code for each brand to be renewed.

#### **76.045. Department Approval**

The department may not approve an application for registration unless the department finds that:

- (1) the composition of the pesticide warrants the proposed claims made for it; and
- (2) the pesticide, its labeling, and other materials required to be submitted under this chapter comply with the requirements of this chapter.

#### **76.046. Registration for Special Local Need**

- (a) The department may register a pesticide for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law, for the purpose of meeting a special local need.
- (b) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of this subchapter.

#### **76.047. Denial or Cancellation of Registration**

- (a) If the department has reason to believe that any use of a registered pesticide is in violation of a provision of this chapter or is dangerous or harmful, the department shall determine whether a hearing shall be held under Section 12.032 on denial or cancellation of registration.
- (b) The department shall issue written notice of a hearing under this section to the registrant of the pesticide. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.
- (c) After opportunity at the hearing for presentation of evidence by interested parties, the department may deny or cancel the registration of the pesticide if the department finds that:
  - (1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;
  - (2) use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;
  - (3) even if properly used, the pesticide is detrimental to vegetation, except weeds, to domestic animals, or to public health and safety;
  - (4) a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature; or
  - (5) the registrant has not complied or the pesticide does not comply with a requirement of this chapter or a rule adopted under this chapter.

#### **76.048. Experimental Use Permit**

- (a) The department may issue an experimental use permit if the department determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this chapter.
- (b) A person may file an application for an experimental use permit before or after applying for registration.
- (c) Use of a pesticide under an experimental use permit is under the supervision of the department and is subject to the terms and conditions, and valid for a period of time, prescribed by the department in the permit.
- (d) The department may revoke an experimental use permit at any time if the department finds that:
  - (1) the terms or conditions of the permit are being violated; or
  - (2) the terms and conditions of the permit are inadequate to avoid any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide.

### **Subchapter D. Licensing of Dealers**

#### **76.071. License Required**

- (a) A person may not distribute in this state a restricted use or state-limited-use pesticide without a valid current pesticide dealer license issued by the department.
- (b) Except as otherwise provided by this section, a pesticide dealer must obtain a license for each location in the state that is used for distribution. If the person does not have a place of business in this state, the person may obtain one license for all out-of-state locations, but shall file as a condition to licensing a designation of an agent for service of process as provided by Section 76.042(d) of this code.
- (c) A person must apply for a pesticide dealer license on forms prescribed by the department.

#### **76.072. Expiration**

A pesticide dealer license expires on December 31 of each year.

#### **76.073. Fees**

- (a) An application for a pesticide dealer license must be accompanied by an annual registration fee, as fixed by the department.
- (b) A person who fails to apply for renewal of a pesticide dealer license on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.
- (c) A person licensed as a dealer under Chapter 75 of this code may not be required to pay an additional fee for the license prescribed in this subchapter.

#### **76.074. Display of Dealer License**

- (a) Each dealer shall prominently display the pesticide dealer license in the dealer's place of business.
- (b) Failure to display a license as required by this section is a ground for revocation of the license.

#### **76.075. Records**

- (a) A licensed pesticide dealer shall maintain for a period of two years records of each restricted use and state-limited-use pesticide sold. The department shall prescribe the information to be included in the records.
- (b) The department may require a licensed pesticide dealer to submit records to the department. Failure to submit a record requested by the department is a ground for revocation of a license.

#### **76.076. Denial, Revocation, Modification, or Suspension of License**

- (a) The department may refuse to issue a pesticide dealer license if the applicant fails to comply with this subchapter.
- (b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee if the licensee fails to comply with this subchapter or a rule adopted by the department under this subchapter.
- (c) If a license suspension is probated, the department may require the person to:
  - (1) report regularly to the department on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the department; or
  - (3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.
- (d) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

#### **76.077. Exceptions**

- (a) This subchapter does not apply to a manufacturer or formulator of a pesticide who does not sell directly to the user.
- (b) This subchapter does not apply to a licensed pesticide applicator who:
  - (1) distributes restricted use or state-limited-use pesticides only as an integral part of the pesticide application business; and
  - (2) dispenses the pesticides only through equipment used in the pesticide application business.
- (c) This subchapter does not apply to a federal, state, county, or municipal agency that provides pesticides only for its own programs.

### **Subchapter E. Use and Application**

#### **76.101. Coordination**

- (a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing of pesticide applicators to the administrator of the Environmental Protection Agency.
- (b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas experiment station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.
- (c) The department shall make plans under this section on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The department shall make full use of grants-in-aid and cooperative agreements in administering this subchapter.
- (d)
  - (1) Except as otherwise provided by this subsection, no city, town, county, or other political subdivision of this state shall adopt any ordinance, rule, or regulation regarding pesticide sale or use.

- (2) Nothing in this subsection shall be construed to limit the authority of a city, town, or county to:
  - (A) encourage locally approved and provided educational material concerning a pesticide;
  - (B) zone for the sale or storage of such products;
  - (C) adopt fire or building regulations as preventative measures to protect the public and emergency services personnel from an accident or emergency involving such products, including regulations governing the storage of such products or governing fumigation and thermal insecticidal fogging operations;
  - (D) provide or designate sites for the disposal of such products;
  - (E) route hazardous materials; or
  - (F) regulate discharge to sanitary sewer systems.
- (3) This subsection shall not prevent a city, town, county, or any political subdivision from complying with any federal or state law or regulation. This subsection shall not prevent a city, town, county, or any political subdivision from attaining or maintaining compliance with federal or state environmental standards including Texas water quality standards. A city, town, county, or other political subdivision may take any action otherwise prohibited by this subsection in order to comply with any federal requirements, to avoid any federal or state penalties or fines, or to attain or maintain federal or state environmental standards including Texas water quality standards.
- (4) Nothing in this subsection may be construed to affect Chapter 75 of this code.

#### **76.102. Agencies Responsible for Licensing Pesticide Applicators**

- (a) The department shall license pesticide applicators involved in the following license use categories:
  - (1) agricultural pest control, including animal pest control;
  - (2) forest pest control;
  - (3) ornamental and turf pest control, except as provided by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes);
  - (4) seed treatments;
  - (5) right-of-way pest control;
  - (6) regulatory pest control;
  - (7) aquatic pest control; and
  - (8) demonstration pest control.
- (b) The Texas Department of Health shall license pesticide applicators involved in the license use category of health-related pest control.

#### **76.103. Program Contingent on Federal Funds**

- (a) The licensing of commercial applicators, noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.
- (b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.
- (c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in the Texas Register.
- (d) The department shall determine the effective date of discontinuance or resumption of the program, but the date may not be before the date of publication of notice in the Texas Register.
- (e) During any period in which the program has been discontinued, a person is not required to have a license provided by this subchapter in order to use pesticides, but a person may be prosecuted for acts committed or omitted when the program was in effect.

#### **76.104. Agency Rules for Application of a Pesticide**

- (a) The head of each regulatory agency may, after notice and public hearing, adopt rules to carry out the provisions of this subchapter for which the agency is responsible.



- (b) Rules adopted under this section may:
  - (1) prescribe methods to be used in the application of a restricted use or state-limited-use pesticide;
  - (2) relate to the time, place, manner, method, amount, or concentration of pesticide application or to the materials used in pesticide application; and
  - (3) restrict or prohibit use of a restricted use or state-limited-use pesticide in designated areas during specific periods of time.
- (c) A regulatory agency may adopt a rule under this section only after consideration of precautions or restrictions necessary to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

#### **76.105. License Required**

- (a) A person may not use a restricted use or state-limited-use pesticide unless the person is:
  - (1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to use the restricted use or state-limited-use pesticide in the license use categories covering the proposed pesticide use;
  - (2) an individual acting under the direct supervision of a licensed applicator; or
  - (3) a certified private applicator as defined in Section 76.112(j) of this code.
- (b) An individual is under the direct supervision of a licensed noncommercial or a licensed private applicator if the individual is acting under the instructions and control of a licensed noncommercial or a licensed private applicator who is responsible for the actions of the individual and who is available if and when needed. The licensed noncommercial or licensed private applicator is not required to be physically present at the time and place of the pesticide application.
- (c) An individual is under the direct supervision of a licensed commercial applicator if the individual is acting under the instructions and control of a licensed commercial applicator who is responsible for the actions of the individual and who is continuously physically present at the time and place of the pesticide application.
- (d) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticides being used by the individual. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision attends a program conducted by the department that is designed to make the person knowledgeable of the label requirements and rules and regulations governing the use of pesticides.
- (e) A person who is authorized under this chapter to use restricted use or state-limited-use pesticides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted use or state-limited-use pesticides.
- (f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:
  - (1) approval to authorize use of certain restricted use or state-limited-use pesticides;
  - (2) federal funding for licensing or certification of pesticide applicators;
  - (3) federal funding for pesticide law enforcement efforts; or
  - (4) other federal funding related to pesticide risk reduction.
- (g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.

#### **76.106. Classification of Licenses**

- (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.
- (b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.
- (c) Each regulatory agency may charge a testing fee, as fixed by the head of the regulatory agency, for testing in each license use category.

#### **76.107. Licensing by More Than One Agency**

- (a) A person who wants to be licensed as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing requirements for each category for which the person desires licensing.
- (b) A person licensed under this section must pay testing fees required by each regulatory agency.

#### **76.108. Commercial Applicator License**

- (a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted use pesticides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.
- (b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by an annual license fee, as fixed by the head of the agency.
- (c) The head of a regulatory agency may not issue an original commercial applicator license before the applicant has:
  - (1) filed with the agency evidence of financial responsibility as required by Section 76.111 of this code; and
  - (2) passed an examination under Section 76.110 of this code.
- (d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:
  - (1) the applicant has been convicted of a felony involving moral turpitude in the last five years;
  - (2) the applicant has had a license issued under this subchapter revoked within the last two years;
  - (3) the applicant, or the applicant's representative if the applicant is a business, has been unable to satisfactorily fulfill licensing requirements; or
  - (4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.
- (e) An individual to whom a commercial applicator license is issued is authorized to use and supervise the use of restricted use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.
- (f) If a license is issued in the name of a business, the business must have a licensed applicator employed at all times. Failure to have a licensed applicator employed is a ground for revocation of a business commercial applicator license.
- (g) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

#### **76.109. Noncommercial Applicator License**

- (a) A person who is required to be licensed under Section 76.105 of this code but who does not qualify as a commercial applicator or a private applicator shall apply to the appropriate regulatory agency for a noncommercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.
- (b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. A nongovernmental applicant shall include with the application an annual license fee, as fixed by the head of the regulatory agency. A regulatory agency may not charge a governmental entity applicant a license fee.
- (c) The head of a regulatory agency may not issue an original noncommercial applicator license before the applicant has passed an examination under Section 76.110 of this code.
- (d) An individual to whom a noncommercial applicator license is issued is authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.
- (e) If a license is issued in the name of a governmental entity, the entity must have a licensed applicator employed at all times. Failure to have a licensed applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

- (f) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

#### **76.110. Commercial and Noncommercial Applicator Examination; Reciprocal Agreements**

- (a) Each person applying for a license as a commercial applicator or a noncommercial applicator must pass an examination demonstrating that the person:
- (1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and
  - (2) has knowledge of the use and effects of restricted use and state-limited-use pesticides in the license use categories and subcategories in which the person is to be licensed.
- (b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day. The appropriate regulatory agency may require a testing service to notify examinees of the results of an examination.
- (c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.
- (d) The appropriate regulatory agency may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

#### **76.111. Commercial Applicator Proof of Financial Responsibility**

- (a) Except as otherwise provided by this section, each applicant for a commercial applicator license shall file with the regulatory agency issuing the license:
- (1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or
  - (2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.
- (b) If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c) (1) and rules adopted under Subsection (e) of this section.
- (c) If the State Board of Insurance determines after giving notice to the regulatory agency that the liability insurance policy required by Subsection (a) (2) of this section is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a) of this section, an applicant for a commercial applicator license may:
- (1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amount prescribed by Subsection (f) of this section, made payable to the regulatory agency and issued for the purpose of protecting persons who may suffer damages as a result of the operations of the applicant;
  - (2) file property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the State Board of Insurance; or
  - (3) comply with other proof of financial responsibility requirements adopted by rule of the regulatory agency under this subchapter.
- (d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.
- (e) The proof of financial responsibility required by this section must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.



- (f) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than \$100,000 for property damage and may be not less than \$100,000 for bodily injury. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. At all times during the license period, the coverage must be maintained at not less than the amount set by the agency head or the State Board of Insurance, as applicable.
- (g) At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.
- (h) The head of a regulatory agency may accept a bond or liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the applicant's operation.
- (i) The department shall exempt a commercial applicator from the requirements of showing proof of financial responsibility under this section if the applicator agrees:
  - (1) to a license for use of ground application equipment only; and
  - (2) to a license that limits the application to only those herbicides determined by the department not to create a substantial risk of drift because of volatility.
- (j) Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond, liability insurance policy, or any other proof of financial responsibility as authorized by rule of the regulatory agency. A licensee may not operate as a commercial applicator during an uncovered period. Failure to file a bond, liability insurance policy, or other proof of authorized financial responsibility or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license.
- (k) The regulatory agency by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The regulatory agency may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the commercial applicator or pursuant to court order.

#### **76.112. Private Applicator**

- (a) A person is a private applicator if the person uses or supervises the use of a restricted use or state-limited-use pesticide for the purpose of producing an agricultural commodity:
  - (1) on property owned or rented by the person or the person's employer or under the person's general control; or
  - (2) on the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.
- (b) A private applicator is required to be either licensed or certified to use restricted use or state-limited-use pesticides.
- (c) An employee qualifies as a private applicator under Subdivision (1) of Subsection (a) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.
- (d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a private applicator license.
- (e) A person shall apply for an original or renewal private applicator license on forms prescribed by the regulatory agency. The application shall include information as required by agency rule and must be accompanied by a fee, as fixed by the head of the regulatory agency.
- (f) The head of a regulatory agency may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service. The training course shall cover the use, effects, and risks of restricted use and state-limited-use pesticides.
- (g) The head of a regulatory agency may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.
- (h) An individual to whom a private applicator license is issued is authorized to use and supervise the use of restricted use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a) (1) or (a) (2) of this section.

- (i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.
- (j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a) (1) or (a) (2) of this section.

#### **76.113. Expiration and Renewal of Licenses**

- (a) Each commercial applicator or noncommercial applicator license expires on the last day of February of the year following the year in which it was issued.
- (b) Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued.
- (c) Except as provided by Subsection (d) of this section, a person having a valid license issued under this subchapter may renew the license for another term without retesting by paying to the regulatory agency the license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.
- (d) A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required for renewal.

#### **76.114. Records**

- (a) A regulatory agency shall require each commercial applicator and noncommercial applicator licensee to maintain records of the licensee's use of pesticides. The regulatory agency by rule shall prescribe the information to be included in the records.
- (b) A regulatory agency may require a commercial applicator and noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide and may require those records to be kept separate from other business records.
- (c) A licensee shall keep records required under this section for a period of two years from the date of the pesticide application.
- (d) On written request of the regulatory agency, a licensee shall furnish the agency a copy of any requested record pertaining to the application of pesticides.

#### **76.115. Registration and Inspection of Equipment**

- (a) Each regulatory agency shall provide for the registration and inspection of equipment used in the commercial application of a restricted use or state-limited-use pesticide.
- (b) A regulatory agency may require repairs or alterations of equipment before further use.
- (c) The head of a regulatory agency by rule shall adopt standards that must be met before equipment may be registered.
- (d) Each piece of registered equipment shall be identified by a license plate or decal furnished by a regulatory agency at no cost to the licensee. The license plate or decal must be attached to the equipment in a manner and location prescribed by the regulatory agency.

#### **76.116. Suspension, Modification, or Revocation of License**

- (a) The head of a regulatory agency that licensed or certified an applicator may suspend, modify, or revoke any provision in the license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, or reprimand a licensee or certificate holder if the head of the agency finds that the licensee or certificate holder has:
  - (1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;
  - (2) operated in a faulty, careless, or negligent manner;
  - (3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;



- (4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;
  - (5) failed to maintain a bond or policy of insurance as required by this chapter;
  - (6) made false or fraudulent records, invoices, or reports;
  - (7) used fraud or misrepresentation in making an application for a license or renewal of a license; or
  - (8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license or the certificate holder's certificate to be used by another person.
- (b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.
- (c) If a license or certificate suspension is probated, the regulatory agency may require the person to:
- (1) report regularly to the agency on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the agency; or
  - (3) continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.
- (d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency, except for the department, proposes to suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to suspend, modify, or revoke are appealable to the governing officer or board of the agency.
- (e) Except for a temporary suspension under Subsection (b) of this section, if the department proposes to suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing conducted as provided under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

#### **76.117. Property Owner Use**

This chapter does not prohibit a property owner from using in the property owner's house, lawn, or garden a pesticide that is labeled for that use, other than a pesticide that may be registered and classified for use only by certified applicators.

### **Subchapter F. Storage and Disposal**

#### **76.131. Rules**

- (a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:
  - (1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and
  - (2) preventing any waterway pollution that is harmful to man or wildlife provided, however, that such rules be consistent with Texas Natural Resource Conservation Commission rules adopted under Chapter 26 of the Water Code.
- (b) A person may not store or dispose of a pesticide in violation of a rule adopted by the department under this section.

### **Subchapter G. Enforcement**

#### **76.151. Entry Power**

- (a) For the purpose of inspection, examination, or sampling, the department is entitled to enter at reasonable hours any building or place owned, controlled, or operated by a registrant or dealer if from probable cause it appears that the building or place contains a pesticide.
- (b) A regulatory agency is entitled to enter any public or private premises at reasonable times to:
  - (1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;
  - (2) inspect or sample land exposed or reported to be exposed to a pesticide;
  - (3) inspect an area where a pesticide is disposed of or stored; or
  - (4) observe the use and application of a restricted use or state-limited-use pesticide.

- (c) If a regulatory agency is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

#### **76.152. Sampling**

The department is entitled to take a sample for official analysis from any package or lot of pesticides found within this state.

#### **76.153. Stop-Sale Order**

- (a) If the department has reason to believe that a pesticide is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the sale of the pesticide. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell the pesticide until the department determines that the pesticide is in compliance with this chapter.
- (b) This section does not limit the right of the department to proceed as authorized by another section of this chapter.

#### **76.154. Injunction**

- (a) The department may sue in the name of the commissioner to enjoin any violation of a provision of this chapter. Venue is in the county in which the alleged violation occurred or is occurring.
- (b) A regulatory agency may request an appropriate prosecuting attorney or the attorney general to sue to enjoin a violation or threatened violation of a provision of this chapter that is within the agency's responsibility.

#### **76.155. Prosecutions**

A regulatory agency may request the appropriate prosecuting attorney to prosecute a violation of a provision of this chapter.

#### **76.1555. Administrative Penalty**

- (a) If a person violates a provision of Chapter 75 or 76 of this code administered by the department or a rule or order adopted by the department under either of those chapters, the department may assess an administrative penalty against the person as provided by Section 12.020, except that the penalty shall not exceed \$4,000 for all violations related to a single incident.
- (b) The department shall establish a schedule stating the types of violations possible under Chapters 75 and 76 of this code. The department is not required to comply with Subchapter B, Chapter 2001, Government Code, when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.
- (c) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

#### **76.156. Civil Penalty**

- (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000 for each day on which the violation occurs.
- (b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$10,000 for each violation, provided that the penalty shall not exceed \$25,000 for all violations related to a single incident.
- (c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.
- (d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.
- (e) The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

- (f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

## **Subchapter H. Remedies**

### **76.181. Appeal of Denial or Cancellation of Pesticide Registration**

- (a) A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been canceled may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.
- (b) Appeal under this section is governed by the substantial evidence rule.

### **76.182. Appeal of Permit or License Denial, Suspension, Modification, or Revocation**

- (a) A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, or private applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, private applicator license, or private applicator certificate has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.
- (b) Appeal under this section is governed by the substantial evidence rule.

### **76.183. Appeal of Stop-Sale Order**

- (a) The owner or custodian of a pesticide to which a stop-sale order applies may appeal the order to a court of competent jurisdiction in the county where the pesticide is found.
- (b) Appeal under this section is by trial de novo.

### **76.184. Reports of Pesticide Damage Claims**

- (a) A person claiming damages from a pesticide application may file with the regulatory agency that licensed the certified applicator whose action allegedly caused the damage a written statement claiming that the person has been damaged. To be eligible for consideration by the agency, the report must be filed before the 31st day following the day of the alleged occurrence or, if a growing crop is alleged to have been damaged, before the time that 25 percent of the crop has been harvested or before the 31st day, whichever is less. The report must contain the name of the person allegedly responsible for the application of the pesticide and the name of the owner or lessee of the land on which the crop is grown and to which damage is alleged to have occurred. The regulatory agency shall prepare a form to be furnished to persons for use in filing damage reports. The form may contain other information that is required by the head of the regulatory agency.
- (b) On receipt of a report, the regulatory agency shall notify the licensee, the owner or lessee of the land on which the alleged act occurred, and any other person who may be charged with responsibility for the damages claimed. The regulatory agency shall furnish copies of the report to those people on request.
- (c) The regulatory agency shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. In order that damage may be assessed, the claimant shall permit the regulatory agency and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been damaged.
- (d) Failure to file a report does not bar maintenance of a civil or criminal action. If a person fails to file a report and is the only person claiming injury from the particular use or application of a pesticide, the regulatory agency may, if in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter to the person alleged to have caused the damage.

### **76.185. Damages Resulting From Application of Pesticide Under Government Program**

Notwithstanding other law, the owner or lessee of land on which a pesticide is applied is not responsible for damages resulting from the application of the pesticide or subject to a criminal or civil penalty in connection with the application of the pesticide if:

- (1) the pesticide is applied under a local, state, or federal government program that requires the application of the pesticide to the land; and

- (2) the owner or lessee of the land on which the pesticide is applied does not control or have a right to control the time and manner of the application of the pesticide to the land.

## **Subchapter I. Penalties**

### **76.201. Offenses**

- (a) A person commits an offense if the person distributes within this state or delivers for transportation or transports in intrastate commerce or between points within this state through a point outside this state, any of the following:
- (1) a pesticide that has not been registered as provided by this chapter;
  - (2) a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;
  - (3) a pesticide that is not in registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by Section 76.021 of this code;
  - (4) a pesticide:
    - (A) that is of strength or purity that falls below the professed standard or quality expressed on its labeling or under which it is sold;
    - (B) for which a substance has been substituted wholly or in part;
    - (C) of which a valuable constituent has been wholly or in part abstracted; or
    - (D) in which a contaminant is present in an amount that is determined by the department to be a hazard;
  - (5) a pesticide or device that is misbranded; or
  - (6) a pesticide in a container that is unsafe due to damage.
- (b) A person commits an offense if the person:
- (1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter;
  - (2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;
  - (3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;
  - (4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or
  - (5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects.
- (c) A person other than a person to whom the pesticide is registered commits an offense if the person uses for the person's advantage or reveals, other than to a properly designated state or federal official or employee, a physician, or in emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under this chapter and marked as privileged or confidential by the registrant.
- (d) A person commits an offense if the person:
- (1) commits an act for which a certified applicator's license may be suspended, modified, or revoked under Section 76.116 of this code; or
  - (2) violates any other provision of this chapter.
- (e) A person commits an offense if the person knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects.

### **76.202. Penalty**

- (a) Except as provided by Subsection (b) of this section, an offense under Section 76.201 of this code is a Class C misdemeanor, unless the person has been previously convicted of an offense under that section, in which event the offense is a Class B misdemeanor.
- (b) An offense under Section 76.201(e) of this code is a Class A misdemeanor, unless the person has been previously convicted of an offense under that subsection, in which event the offense is a felony of the third degree.



## **76.203. Defenses**

- (a) It is a defense to prosecution under this subchapter that the defendant:
  - (1) is a carrier who was lawfully engaged in transporting a pesticide or device within this state and who, on request, permitted the department to copy all records showing the transactions in and movement of the pesticide or device;
  - (2) is a public official of this state or the federal government who was engaged in the performance of an official duty in administering state or federal pesticide law or engaged in pesticide research;
  - (3) is the manufacturer or shipper of a pesticide that was for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides and the manufacturer or shipper held a valid experimental use permit as provided by this chapter; and
  - (4) manufactured or formulated a pesticide or device solely for export to a foreign country and prepared or packed the pesticide or device according to the specifications or directions of the purchaser.
- (b) It is a defense to prosecution under Section 76.201(a)(3) of this code that the defendant is an applicator who, after acquiring an unbroken container, opened and transported the open container to and from application and storage sites as necessary.
- (c) It is an affirmative defense to prosecution under Section 76.201(e) of this code that the defendant was using, causing to be used, handling, storing, or disposing of the pesticide in accordance with a label that complied with this chapter and rules adopted under this chapter.

## **Chapter 12. Texas Agriculture Code**

### **12.024. Late Renewal of License or Registration**

- (a) This section is applicable only to a renewal fee under Section 14.005, 71.043, 71.057, 75.004, 76.044, 76.073, 76.113, or 132.025 of this code.
- (b) A late fee is assessed according to the following schedule:

<b>Days Late .....</b>	<b>Late Fee Amount</b>
at least 1 but less than 31 .....	20% of the renewal fee
at least 31 but less than 91 .....	50% of the renewal fee
at least 91 but less than 365 .....	100% of the renewal fee
- (c) A person who fails to pay the renewal fee and the applicable late fee within one year after the due date of the renewal fee is not eligible to renew a license. The ineligible person may reapply for an initial license or registration.

### **12.026. Public Interest Information; Complaints**

- (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.
- (b) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:
  - (1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;
  - (2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or
  - (3) in a bill for service provided by an individual or entity regulated by the department.
- (c) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.
- (d) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

# Texas Pesticide Regulations

## §7.1. Definitions

In addition to the definitions set out in the Act, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

*Act* — Texas Pesticide Control Act, codified at Texas Agriculture Code, Chapter 76.

*Adjoining* — Directly contiguous to a field on which pesticides may be applied or which is separated from a field only by a road, railway, or utility right-of-way, or by a government-owned land corridor or waterway having a width of not more than 100 feet.

*Agricultural commodity* — A plant or animal grown for sale, lease, barter, feed, or human consumption and animals raised for farm or ranch work.

*Application* — The placing of a pesticide on a plant, animal, building, or soil; or its release into the air or water to prevent damage, or destroy pests.

*Commissioner* — The commissioner of agriculture of the State of Texas, or his designee.

*Custom blend* — A pesticide formulation produced on special request for a specific customer.

*Custom mix* — A pesticide formulation produced on special request for a specific customer.

*Department* — Texas Department of Agriculture.

*EPA* — Environmental Protection Agency.

*Extension* — Texas Agricultural Extension Service.

*FAA* — Federal Aviation Administration.

*Farm labor camp* — Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.

*Farm operator* — The person responsible for the overall control and management of the crop. Responsibility for the overall control and management of the crop may be transferred by contract to a second party. However, if the effective date of the transfer of responsibility is unclear, both the farm operator and the second party may be held liable for any violation of these regulations.

*Nurseryman* — A person who possesses a current Class 1, 2, 3, or 4 nursery and floral certificate issued by the department.

*Person* — Includes any individual, partnership, association, corporation, and any organized group of persons, whether incorporated or not.

*State-limited-use pesticide* — Any pesticide product classified as a state-limited-use pesticide by §7.24 of this title (relating to State-Limited-Use Pesticides).

*Trained trainers* — Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

*WPS* — Federal Worker Protection Standard, 40 Code of Federal Regulations (CFR), Part 170.

## §7.2. Resident Agents

- (a) Any person designated by an out-of-state applicant as a resident agent for service of process in this state pursuant to subchapters C, D, or E of the Act shall:
  - (1) be a citizen of this state; and
  - (2) maintain a permanent address within this state where documents dealing with the administration and enforcement of this law may be served.
- (b) The registrant shall notify the commissioner in writing within 10 days of any change of his resident agent. Failure to give such notice shall be grounds for suspending the registration of the registrant's pesticides.

## §7.3. Registration of Pesticides

- (a) In addition to the requirements contained in the Act, Subchapter C (concerning registration), the application for registration of a pesticide shall include:
  - (1) a material safety data sheet (MSDS) which complies with the provisions set forth in 29 Code of Federal Regulations §1910.1200(g);
  - (2) an EPA-stamped accepted label and any applicable comments for a pesticide that must be federally registered under the Federal Insecticide, Fungicide and Rodenticide Act, §3; and

- (3) a fee of \$350 per product registered for a two year period. This fee may be prorated in accordance with sub section (h) of this section.
- (b) Product registration may be denied and the registration fee forfeited if the application is incomplete or inaccurate.
- (c) If the registrant distributes a pesticide under more than one brand name or more than one formulation, each brand or formulation must be registered as a separate product.
- (d) It shall be a violation to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received on the last day of the current registration. It is the responsibility of the registrant to obtain and submit an application for registration of a pesticide before the renewal date as prescribed in subsection (g) of this section.
- (e) Any pesticide distributed in this state must have a current registration as long as the product remains in the channels of trade. It shall be the registrant's responsibility to insure that the registration of the pesticide product remains in effect.
- (f) Late fees will be assessed on renewal applications postmarked after the renewal date as prescribed in subsection (g) of this section as provided by the Texas Agriculture Code, §12.024.
- (g) Beginning January 1, 1996, the department will use the following schedule for registering pesticide products by registrant. The first letter of the company name determines the appropriate renewal date according to the schedule below. All pesticide products registered by that registrant must be renewed by the scheduled renewal date. Any new product registered by a registrant will be prorated by quarter so that the registration will expire at the same time as all other registrant pesticide products. Beginning January 1, 1998, all pesticide companies will renew on a two-year schedule from the above renewal dates as provided for in the schedule for calendar year 1997 renewals.

#### **Calendar year 1996 Renewals**

<b>Renewal Date</b>	<b>Company Name</b>	<b>Expiration Date</b>
January 1, 1996	A,B	December 31, 1996
January 1, 1996	C	December 31, 1996
January 1, 1996	D,E	December 31, 1996
January 1, 1996	F,G,H,I	December 31, 1996
January 1, 1996	J,K,L,M	March 31, 1997
January 1, 1996	N,O,P,Q	June 30, 1997
January 1, 1996	R,S	September 30, 1997
January 1, 1996	T,U,V,W,X,Y,Z	December 31, 1997

#### **Calendar year 1997 Renewals**

<b>Renewal Date</b>	<b>Company Name</b>	<b>Expiration Date</b>
January 1, 1997	A,B	March 31, 1998
January 1, 1997	C	June 30, 1998
January 1, 1997	D,E	September 30, 1998
January 1, 1997	F,G,H,I	December 31, 1998
April 1, 1997	J,K,L,M	March 31, 1999
July 1, 1997	N,O,P,Q	June 30, 1999
October 1, 1997	R,S	September 30, 1999
January 1, 1998	T,U,V,W,X,Y,X	December 31, 1999

- (h) Fees are prorated by quarter when registered for less than the two-year registration period.
- (i) Any FIFRA 2(ee) recommendations must be approved by the department prior to being released into the channels of trade.

#### §7.4. Label Requirements

In addition to the labeling requirements contained in the Act, Subchapter B, every pesticide distributed within this state must be prominently labeled with the following information:

- (1) an ingredient statement giving:
  - (A) the accepted common name and/or chemical name of all active ingredients;
  - (B) the percentage by weight of each active ingredient and the percentage by weight of inert ingredients;
  - (C) a trademark or trade name may not be used as the name of an ingredient unless it has become the common name;
  - (D) the sliding scale method of expressing percentages shall not be used (example: active ingredient name—6.0% to 8.0%);
- (2) complete directions for all uses of the pesticide shown on the label or labeling that are necessary for effecting the purpose for which the product is intended, including but not limited to:
  - (A) application rates of product to be applied;
  - (B) proper mixing procedures;
  - (C) application methods;
  - (D) application limitations;
  - (E) restricted entry and preharvest intervals;
  - (F) clean-up, storage, and disposal instructions;
- (3) the net weight or measure of contents, exclusive of wrappers, or other materials:
  - (A) the net weight or measure of contents shall be the average contents unless explicitly stated as a minimum quantity;
  - (B) if the pesticide is a liquid, the net content statement shall be in terms of liquid measure at 68 degrees Fahrenheit (20 degrees Celsius) and shall be expressed in conventional American units of fluid ounces, pints, quarts, and gallons;
  - (C) if the pesticide is a solid or semisolid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces;
  - (D) in all cases, net content shall be stated in terms of the largest suitable units (for example: "one pound, 10 ounces," not "26 ounces");
  - (E) in addition to the required units, specific net content may be expressed in metric units;
  - (F) variation above or below minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good and workman like manufacturing practice;
- (4) numbers or other symbols to identify the manufacturer's lot and batch may be stamped on the pesticide container any place where they can be readily seen; provided, however, it shall be unlawful to have more than one lot or batch number in a single package; and
- (5) after initial registration of a product, registrants shall provide the department the most current pesticide product labeling for that product that the registrant intends to change. Before releasing it into the channels of trade the registrant must have department approval.

#### §7.5. Custom Blends

- (a) Custom blends shall only be distributed or prepared according to the following criteria:
  - (1) the custom blend is prepared to the order of the customer and is not held in inventory by the blender;
  - (2) the custom blend is to be used on the customer's property (including leased or rented property);
  - (3) the pesticide(s) used in the custom blend bears end-use labeling directions which do not prohibit use of the product in such a custom blend;
  - (4) the custom blend is prepared with registered pesticides;
  - (5) the custom blend is delivered or distributed to the customer along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture; and
  - (6) no other pesticide production activity is performed at the establishment excluding bulk repackaging.



- (b) If a restricted-use or state-limited-use pesticide is used in the custom blend, the establishment must be licensed as a pesticide dealer in accordance with Chapter 76, Subchapter D, and §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers).
- (c) Any pesticide containers used in preparing a custom blend, in which a partial amount(s) is still contained within the container, must be prominently identified as a pesticide to be used by that establishment only in a custom blend or in a commercial application made by that establishment.

#### **§7.6. Special Local Needs**

Before approving the registration of a pesticide under the Act, §76.046, the commissioner shall determine:

- (1) that a local need exists;
- (2) that the applicant meets all federal requirements for registration of a pesticide; and
- (3) that the particular use of the pesticide has not been denied, suspended, or canceled by the United States Environmental Protection Agency.

#### **§7.7. Experimental Use Permits**

- (a) Application for experimental use permits (EUP) shall contain the following information:
  - (1) the name and address of the applicant;
  - (2) the name of the manufacturer of the product;
  - (3) the name and address of the person responsible for the experimental program, if different from the applicant;
  - (4) the name of the pesticide;
  - (5) an ingredient statement as required in §7.2 of this title (relating to Resident Agents);
  - (6) the use or uses requested for the experimental permit;
  - (7) the estimated amount of the product to be used;
  - (8) location of the proposed experimental use permit application site.
- (b) A pesticide registration fee of \$100 per year from the effective date of the EUP shall accompany each EUP application if the pesticide is not currently registered for other uses in the state.
- (c) The holder of an EUP shall, as soon as possible, submit to the appropriate regulatory agency the results of the experimentation for which the permit was issued.

#### **§7.8. Authorized Pesticide Users and Pesticide Dealers**

- (a) Authorized pesticide users. A person may not use a restricted-use or state-limited-use pesticide unless the person is:
  - (1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use;
  - (2) an individual acting under the direct supervision of a licensed applicator certified in the use categories covering the use; or
  - (3) a certified private applicator certified in the use categories covering the use as defined in the Act, §76.112(j).
- (b) Pesticide dealers. It shall be a violation for a pesticide dealer required to be licensed by the Act, Subchapter D (concerning licensing of dealers), to continue to distribute restricted-use or state-limited-use pesticides after December 31 of each year without first having renewed the pesticide dealer license in accordance with the Act.
  - (1) Application for a dealer's license shall be made on forms prescribed by the commissioner and shall include the following:
    - (A) the name of the business;
    - (B) the mailing address and location of the business; and
    - (C) the name and address of the applicant's manager or agent.
  - (2) All applicants must submit a license fee of \$100 for each license requested. This fee will not be prorated. Dealers currently licensed under the Texas Herbicide Law, codified at the Texas Agriculture Code, Chapter 75, will not be required to pay an additional fee as long as the herbicide license covers only one outlet. Each additional outlet licensed must pay the pesticide dealer's license fee.

- (3) A pesticide dealer's license shall not be transferable. In case of a change in ownership, outlet, or facilities, a new application and fee are required.
- (4) The records required to be kept by licensed pesticide dealers by the Act, §76.075, shall be kept separate from the licensee's other sales records and shall contain:
  - (A) the name, address, licensed or certified applicator number, or dealer license number of the person to whom the pesticide was distributed;
  - (B) the date of distribution;
  - (C) the brand name and the Environmental Protection Agency registration number;
  - (D) the quantity of pesticide distributed; and
  - (E) if the distribution is made to a nonlicensed person acting under the authorization of a licensed or certified applicator the dealer must also record the name and address of the nonlicensed person to whom the restricted-use or state-limited-use pesticide is made available.
- (5) Records of distribution shall be kept current and maintained at the place of business where distribution occurs as designated on the pesticide dealer's license. The record for each distribution shall contain all of the information as specified in paragraph (4) of this subsection. The licensee shall make these records available for inspection by the department upon request. The department may examine these records at any time during normal business hours or by written request require the licensee to submit a copy of these records in the time period as specified by the request.
- (6) Restricted use or state-limited-use pesticides may only be distributed to licensed applicators, certified private applicators, persons acting under the direct supervision of a licensed applicator, persons authorized by a certified private applicator, or a licensed dealer. Persons authorized to purchase pesticides by a certified private applicator may not take delivery of pesticides in any type of distributing or transporting equipment ready for application.

#### **§7.9. Enforcement**

In addition to the enforcement powers of the commissioner found in the Act, Subchapter G, the commissioner, or his authorized agent, may enter the premises of a registrant or dealer during normal business hours to:

- (1) examine records;
- (2) inspect any apparatus subject to the Act; or
- (3) inspect pesticide packaging, labels and labeling information for compliance with the Act.

#### **§7.10. Applicator Certification**

- (a) The department will certify commercial and noncommercial applicators in the following license use categories and subcategories:
  - (1) agricultural pest control:
    - (A) field crop pest control;
    - (B) fruit, nut and vegetable pest control;
    - (C) weed and brush control in pasture and rangeland;
    - (D) predatory animal control;
    - (E) farm storage pest control and fumigation;
    - (F) animal pest control;
    - (G) citrus pest control; and
    - (H) livestock protection collar application;
  - (2) forest pest control;
  - (3) ornamental plant and turf pest control:
    - (A) plant pest and weed control; and
    - (B) greenhouse pest control;
  - (4) seed treatments;
  - (5) right-of-way pest control;

- (6) aquatic pest control:
    - (A) aquatic plant and animal pest control; and
    - (B) anti-fouling paint;
  - (7) demonstration and research;
  - (8) regulatory pest control;
  - (9) aerial application; and
  - (10) chemigation.
- (b) Producers of agricultural commodities that complete the Extension training program for private applicators and obtain a passing score on the private applicator test may be certified in the following categories and subcategories listed in subsection (a) (1) (A)-(G), (2), (3), (4), (6) (A), and (10) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will not be charged a test fee.
- (c) The department will certify commercial, noncommercial and private livestock protection collar (LPC) applicators upon training and testing on the use of the sodium fluoroacetate (Compound 1080) livestock protection collar in accordance with §7.28 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements).
- (d) The Texas Department of Health will certify noncommercial applicators involved in public health pest control which shall encompass the following subcategories:
- (1) vector control;
  - (2) rodent control; and
  - (3) sanitation.
- (e) Applicators involved in regulatory pest control or demonstration and research pest control will be licensed by the regulatory agency responsible for the category or subcategory of pest control for which the license is requested. Regulatory pest control or demonstration and research pest control licenses may be issued for any category or subcategory listed in this section.
- (f) The department will only certify a commercial applicator in the ornamental plant and turf pest control and weed control subcategories if the applicant is a nurseryman as defined in §7.1 of this title (relating to Definitions), or if the applicator restricts application only to ornamental and turf plants at the production site.
- (g) After completing training prescribed by §7.29 of this title (relating to M-44 Sodium Cyanide State-Limited-Use Requirements), the department will certify commercial applicators licensed in the predatory animal control subcategory and noncommercial applicators licensed in the predatory animal control subcategory, research and demonstration category, or the regulatory pest control category to use M-44 sodium cyanide.
- (h) The department may enter into a memorandum of agreement with another state or a federal agency for reciprocity in certifying pesticide applicators.

#### **§7.11. Licensing Requirements for Commercial and Noncommercial Applicants**

- (a) All testing conducted by the department under the authority of the Act, §76.106, shall be designed to cover the information necessary for an applicant to demonstrate competency to use and supervise the use of restricted-use and state-limited-use pesticides in a safe and effective manner. Anyone who makes a passing score on the general pesticide applicator examination, the laws and regulations examination, and on one or more category tests will be eligible to be a certified applicator in those categories or subcategories for which a passing score was received and shall be licensed as soon as all other licensing requirements are met. An aerial or chemigation applicator must also be licensed in any category or subcategory in which an application is to be made. Applicators may license in the subcategory listed in §7.10(a)(6)(B) of this title (relating to Applicator Certification) by successfully completing a single test pertaining to the subcategory and related laws and regulations and fulfilling other licensing requirements; however, applicators who license in this manner may not add categories without successfully completing the general pesticide applicator examination and the laws and regulations examination.
- (b) A fee of \$20 shall be required for testing each applicant in each license use category and subcategory, and must be paid before the test or tests are given.
- (c) Individual test scores are valid for only 12 months.

### **§7.12. Commercial Applicator License**

- (a) An application for an original or renewal commercial applicator license shall be filed with the department pursuant to the Act, §76.108, and shall be on forms prescribed by the department.
- (b) Each application for an original or renewal commercial applicator's license must be accompanied by an annual license fee of \$150.
- (c) The licensee shall notify the department within 30 days of any change in the information provided as part of the application for a license under subsection (a) or (d) of this section.
- (d) Each application for an original or renewal commercial applicator's license must verify proof of current financial responsibility as required by §7.13 of this title (relating to Commercial Applicator Proof of Financial Responsibility).
- (e) A licensed commercial applicator who is eligible for recertification or annual license renewal and is in good standing may convert the license to a noncommercial license by making application to the department. The fee shall be waived for licensed commercial applicators that become employed by a governmental agency and are applying restricted-use and state-limited-use pesticides only in the line of public employment.

### **§7.13. Commercial Applicator Proof of Financial Responsibility**

- (a) Bonds and liability insurance. In addition to the requirements of the Act, §76.111, the department will accept a bond or a liability insurance policy as proof of financial responsibility, provided that the bond or liability insurance policy meets the following conditions:
  - (1) **Amount and type of coverage.** Each bond or liability insurance policy must, at a minimum, provide for limits of liability of \$100,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage. A general aggregate policy at a minimum of \$200,000 per occurrence may be accepted if a split limit policy is not available. These limits apply to both ground and aerial applicators. The insurance policy or bond may be written to cover one or more licensed applicators and those applicators working under their supervision. Each licensed applicator and anyone who applies pesticides under their supervision, must be covered by a form of financial responsibility that complies with this section and that provides financial responsibility for any occurrence of injury or damage resulting from the application of pesticides by such persons. Claims-made liability insurance policies will not be accepted by the department. If proof of financial responsibility is provided by insurance, it must be a commercial policy with chemical drift coverage.
  - (2) **Deductible.** A bond or liability insurance policy with a deductible of not more than \$1,000 will be acceptable to the department so long as the applicant has not failed to pay a deductible amount on a prior claim, in which case no deductible provision will be acceptable to the department.
  - (3) **Extent of coverage.** The bond or liability insurance policy must protect persons who may suffer damages or injuries as a result of the operations of the applicant whether the damage or injuries are caused by the applicant or persons working under their supervision. The coverage must include damages or injuries to real or personal property, including crops, plants, soils, bodies of water, or structures on land not being worked on by the applicator; or persons regardless of their location on or off the land being worked. Each insurance policy must contain a clear indication that such coverage is provided in the form of a pesticide and herbicide endorsement or similar chemical coverage endorsement or language acceptable to the department. If a bond or liability insurance policy specifically excludes a particular chemical from coverage, the applicator is not licensed to apply that chemical.
  - (4) **Cancellation or reduction in coverage.** A bond or liability insurance policy must include the endorsement approved by the Texas Department of Insurance for third party notification of cancellation or coverage change or other similar language that the surety or the insurer will notify the department of a cancellation or material change in the bond or policy.
  - (5) **Suspension of license.** A commercial applicator license will automatically be suspended and be invalid as a basis for operations if the full amount and extent of coverage required by this section is not maintained, except as provided in subsection (c) of this section. If the bond or policy falls below the prescribed minimum limits of liability for any reason, the licenses of all licensed applicators relying on that bond or policy for proof of financial responsibility are automatically suspended. A licensee may not operate as a commercial applicator during a period in which the minimum requirements for coverage are not maintained.
  - (6) **Reinstatement of license.** The license of a commercial applicator may be reinstated after the full amount and extent of coverage required by this section is obtained by the applicator and the applicator submits proof of financial responsibility to the department as required by §7.12 of this title (relating to Commercial Applicator License).



- (7) **Proof of financial responsibility.** In order to prove compliance with the requirements of this subsection, an applicant must submit to the department either certification of a bond on a form approved by the department, or certification of a liability insurance policy by providing the name and telephone number of the insurance agent, the policy number and the expiration date of the policy on the application for a pesticide applicator's license or a renewal for a commercial pesticide applicator's license. No original application or application for renewal of a commercial applicator license will be deemed complete until the applicant has provided to the department the appropriate proof of financial responsibility.
- (b) Certificates of deposit and letters of credit. The department will accept a certificate of deposit or a letter of credit from an applicant if the original instrument is submitted to the department and under the following conditions.
- (1) **Inability to obtain bond or liability insurance coverage.** In order to be eligible to submit a certificate of deposit or letter of credit as proof of financial responsibility, an applicant must demonstrate annually to the department that the applicant cannot reasonably obtain the bond or liability insurance policy specified in subsection (a) of this section. The department requires:
- (A) if a bond or liability insurance policy is unavailable:
- (i) at least three signed and notarized statements from non-affiliated insurance companies (at least two of which are eligible surplus lines carriers) or their agents that the applicant is unable to secure a bond or liability insurance policy in the full amount and extent of coverage required by subsection (a) of this section; and
  - (ii) a sworn statement from the applicator:
    - (I) that the inability of the applicator to obtain such coverage is not the result of the applicator's inability to apply pesticides properly, the applicator's past failure to apply pesticides properly, or the applicator's failure to supervise the application of pesticides in a proper fashion; and
    - (II) that he or she has not operated under authority of his or her applicator's license during a period of time when no bond or liability insurance policy was in effect to cover the operations; or
- (B) if a bond or liability insurance policy in the full amount and extent of coverage required by subsection (a) of this section is available to the applicant but is not reasonably affordable:
- (i) at least three signed and notarized statements from insurers or their agents of the quotes for the available policies; and
  - (ii) a sworn statement from the applicator:
    - (I) containing a history of the applicant's costs for the required coverage for the immediate past five years or, if the applicant has been licensed fewer than five years, for all years the applicant has been licensed; and
    - (II) affirming that the applicator has not operated under the authority of his or her applicator's license during a period of time when no bond or liability insurance policy was in effect to cover the operations;
- (C) if the Texas Department of Insurance has made a determination that the liability insurance policy required by the Act, §76.111, subsection (a)(2), is not generally and reasonably available to commercial pesticide applicators, a certificate of deposit or letter of credit that otherwise meets the requirements of this subsection will be accepted by the department as proof of financial responsibility for the applicator.
- (2) **Certificate of deposit.** The department will accept a certificate of deposit in the amount of \$200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The certificate of deposit must be made payable to the Texas Department of Agriculture, and the original of the certificate must be filed with the department. The certificate of deposit may not be used as collateral or pledged for any purpose.
- (3) **Letter of credit.** The department will accept a letter of credit in the amount of \$200,000 issued by a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The letter of credit must be an irrevocable standby letter of credit made in favor of the Texas commissioner of agriculture for the account of the applicant. Draws must be able to be made by the commissioner or by his designated agent by a sight draft referencing the number of the letter of credit. The letter of credit must be irrevocable for at least one year. The department will provide any applicant with a form for the letter of credit which is acceptable to the department. All other letters of credit are subject to specific approval by the department.

- (4) **Payment of claims.** If a claimant contacts the department for payment of a claim against a licensed applicator who has provided a certificate of deposit or letter of credit as proof of financial responsibility, the department will not disburse funds or release a certificate or letter except by consent of the applicator or pursuant to court order. Prior to payment of such a claim or the release of a certificate of deposit, the licensed applicator must furnish the department with a list of all outstanding claims for which the certificate of deposit or letter of credit might have to respond.
- (5) **Suspension of license.** Each commercial applicator license will automatically be suspended and be invalid as a basis for operations if the full amount of the certificate of deposit or letter of credit required by this section is not maintained, except as provided in subsection (c) of this section. A licensee may not operate as a commercial applicator during a period in which the full amount of the certificate of deposit or letter of credit is not maintained.
- (6) **Reinstatement of license.** The license of a commercial applicator may be reinstated after the full amount of the certificate of deposit or letter of credit is obtained by the applicator, the applicator submits the original certificate of deposit or letter of credit to the department, and the department accepts the proof of financial responsibility submitted by the applicator.
- (7) **Extent of coverage.** The certificate of deposit or letter of credit must protect persons who may suffer damages or injury as a result of the operations of the applicant whether the damage or injury is caused by the applicant or person working under his or her supervision. The coverage must include damage or injury to real or personal property, including crops, plants, soils, bodies of water, or structures not being worked on by the applicator; or persons regardless of their location on or off the land being worked. The certificate of deposit or letter of credit need not cover damages or injury to agricultural crops, plants, or land being worked on by the applicant.
- (c) A licensed commercial applicator does not need to maintain proof of financial responsibility as required by this section if the applicator provides written notice on a form provided by the department that the applicator will not operate as a commercial applicator applying or supervising restricted-use or state-limited-use pesticides during an uncovered period. Such written notice must be received by the department prior to the cancellation of the proof of financial responsibility required by this section. Reinstatement of license will be accepted as provided for by subsection (a) (6) and (b) (6) of this section.

#### **§7.14. Noncommercial Applicator License**

- (a) Except as specified on the application form, an application for an original or renewal noncommercial applicator license filed with the department pursuant to the Act, §76.109, shall contain the same information as required for a commercial applicator license application by §7.12 of this title (relating to Commercial Applicator License).
- (b) Nongovernmental applicants shall pay an annual license fee of \$100 at the time of application. No fee will be charged for a license issued to employees of a governmental entity for applying pesticides as part of their official duties. Governmental employees who apply restricted-use or state-limited-use pesticides outside of their governmental employment must pay the \$100 fee.
- (c) Noncommercial applicator licenses will be issued only to persons who have qualified as certified applicators in the license use categories or subcategories for which the license is requested.
- (d) It shall be the responsibility of the licensee to give written notice to the department within 30 days of any change of address or employment.
- (e) A fee exempt noncommercial license issued to an employee of a governmental entity shall be returned to the department within 30 days of termination of employment. A fee exempt noncommercial applicator who is eligible for recertification or annual license renewal and who is in good standing may convert to a fee paid commercial or noncommercial license in appropriate categories without retraining or retesting by submitting a complete application and license fee within the six months of termination of public employment. A fee exempt noncommercial applicator who is eligible for license renewal or recertification and who is in good standing and transfers to another governmental entity may relicense in the appropriate categories within six months of the transfer without retraining or retesting.
- (f) A fee paid noncommercial applicator who is eligible for recertification or annual license renewal and is not prohibited from receiving a license by the Act, §76.108(d), may convert the license to a commercial license by making application to the department, paying the required fee, and providing proof of financial responsibility.

#### **§7.15. Private Applicators**

- (a) An application for an original or renewal private applicator license shall be on a form prescribed by the department and accompanied by a license fee of \$50. An application for renewal must be received by the department on or before the last day of February in the year in which license renewal is due.

- (b) A private applicator certification or license may be revoked by the department if the applicator is not engaged in the production of an agricultural commodity.
- (c) A licensed or certified private applicator must notify the department within 30 days of any change of address. Failure to provide such information may be grounds for suspension or revocation of a certification or license.
- (d) An employee who qualifies as a private applicator under the Act, §76.112(c), is not considered to be providing equipment or pesticide when the employer is identified on the private applicator's certification license application or amendment thereof, and either:
  - (1) the pesticide or equipment is purchased by the private applicator using a check, cash, or account of the employer; or
  - (2) the private applicator is reimbursed by the employer for the equipment or pesticide.

#### **§7.16. Applicator Recertification**

- (a) All applicators must meet recertification requirements through continuing education activities.
- (b) Continuing education activities may include lectures, panel discussions, organized video or film with live instruction, field demonstrations, or other activities approved by the department.
- (c) Each activity must be accredited by the department. No activity may claim to be approved, accredited, or accepted by the department or use any other such term that would lead an applicator to believe that it has been approved by the department for recertification unless it is so accredited.
- (d) The department shall assign no more than one continuing education credit unit for each hour of net actual instruction time for an accredited activity.
- (e) To be eligible for accreditation, the department will require:
  - (1) that the activity have significant educational or practical content to maintain appropriate levels of competency;
  - (2) that the activity be conducted by a university, a governmental agency, an association with membership of 25 or more persons, or a private independent nonapplicator business;
  - (3) that each activity has a recordkeeping procedure for verifying applicator attendance using department forms or approved formats;
  - (4) that each activity be at least one hour of net instruction time;
  - (5) that activities cover one or more of the following topics pertaining to pesticides:
    - (A) label and labeling comprehension;
    - (B) safety factors;
    - (C) environmental consequences;
    - (D) pest features;
    - (E) integrated pest management strategies/pest management practices;
    - (F) pesticide factors;
    - (G) equipment characteristics;
    - (H) application techniques/drift minimization;
    - (I) laws and regulations; or
    - (J) business ethics; and
  - (6) the activity is able to comply with any applicable federal and state laws, including the Americans With Disabilities Act (ADA) requirements for access to activities.
- (f) Prior accreditation shall not be required for applicator recertification courses of up to three continuing education credit units conducted by Extension faculty, department pesticide program staff and pesticide inspectors for any pesticide applicator, provided that all other requirements for course content and records are met. The department may enter into a memorandum of agreement with Extension regarding the specific requirements for applicat recertification.
- (g) Department personnel may monitor all accredited activities, and all fees charged by the sponsor shall be waived for department personnel who monitor the recertification activity.
- (h) The department may deny, revoke, or refuse to renew accreditation for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for accreditation or that are a part of these rules.

- (i) The department may enter into a memorandum of agreement with another state or non-profit professional society or association to recognize the state's pesticide applicator recertification or the society's professional recertification for satisfaction of the requirements of this section for commercial, noncommercial and private applicator recertification only if:
  - (1) the standards for recertification meet or exceed the standards for the one-year or five-year recertification periods as set out in this section; and
  - (2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the department.
- (j) Each continuing education activity shall be accredited for one calendar year only.
- (k) In order for a recertification activity to be accredited by the department, the sponsor must:
  - (1) submit a completed department-prepared application form;
  - (2) provide any additional material relevant to the activity which is requested by the department; and
  - (3) submit the application and information required by the department at least 30 days in advance of the first date of the activity. The department may waive the 30-day provision providing all other requirements are met. The department will respond to the sponsor within ten days of receipt of the application and approve, reject, or request additional information.
- (l) Sponsors who wish to continue accreditation must file for renewal annually on a form prepared by the department.
- (m) Sponsors of accredited activities shall:
  - (1) prepare a roster of applicators that attend the activity which contains, at a minimum, the pesticide applicator's name and current license or certificate number;
  - (2) distribute a completion certificate at the time of the activity to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;
  - (3) send the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or approved formats; and
  - (4) ensure that each continuing education unit accredited be at least one hour of net instruction time.
- (n) Governmental agencies may enter into an agreement with the department for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the department.
- (o) No credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizations, political, procedural, or other nonrelevant activities.
- (p) Applicators will recertify through a self-certification program. Each applicator will be required to maintain the number of credits necessary to renew a license or certificate. Certificates of completion received from accredited activities must be maintained for a period of 12 months after the most recent renewal of their license or certificate.
- (q) Each licensed commercial or noncommercial applicator must obtain five hours of CEUs annually. A minimum of one hour must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.
- (r) Each commercial or noncommercial applicator must obtain at least five credits during the 12 months preceeding December 31 in order to recertify and renew a license for the following year. An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all recertification credits required for the last year of licensing are completed. Until the 12 month period has elapsed, applicators are prohibited from retesting under §7.11 of this title (relating to Classification of Commercial and Noncommercial Licenses).
- (s) Private applicators must recertify as follows.
  - (1) Each licensed private applicator must obtain 15 continuing education credits within a five year period including at least two credits in laws and regulations and two credits in integrated pest management, except that any private applicator with a recertification date that began prior to January 1, 1996, must obtain two credits in laws and regulations and one credit in integrated pest management.
  - (2) Each licensed private applicator must obtain 15 credits prior to February 28 of the year their license expires.
  - (3) Private applicators issued a certificate prior to January 10, 1989, may fulfill their recertification requirement on a one-time only basis by completing the Extension private applicator training program, attaining a passing score on the private applicator test, and obtaining a private applicator license. Certified private applica-



- tors who choose not to license but wish to maintain certification under a certificate issued prior to January 10, 1989, will be required to recertify as specified for licensed private applicators in this subsection.
- (4) Private applicators may have the option of foregoing continuing education requirements for a recertification period by following these procedures:
    - (A) Take and pass a comprehensive examination administered by the department which will contain questions relevant to those topics which would be covered at various continuing education activities. A certificate of completion worth 15 continuing education units will be issued by the department upon a passing score being attained by the applicator.
    - (B) If the applicator fails the examination, subsequent attempts will be allowed until a passing score is attained. If a passing score is not attained, the applicator must obtain the required continuing education units pursuant to this subsection.
    - (C) A fee of \$50 is required prior to each examination.
  - (t) Failure to comply with the continuing education requirement for commercial, noncommercial and private applicators will:
    - (1) result in nonrenewal of an applicator's license or certification until the necessary credits for continuing education are attained;
    - (2) require the applicator to take and pass comprehensive department examinations for general knowledge and for each category in which the applicator seeks to be licensed if the applicator does not recertify and renew in one year following the expiration of the license;
    - (3) require retraining of commercial, noncommercial and private applicators for categories or subcategories requiring special training if the applicator does not recertify and renew in one year following the expiration of the license; and
    - (4) subject a noncompliant applicator to administrative, civil or criminal penalties and/or license or certificate revocation, suspension, modification or probation for failure to comply with continuing education requirements or if the applicator operates under a license that has not been renewed.
  - (u) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will assign the number of credits for the activity when the activity is held by an out-of-state sponsor and the following applies:
    - (1) the activity contains course content of the highest standards;
    - (2) the activity is sponsored by an institution of higher education, a regional association, a national association, or the state or federal government;
    - (3) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of the activity; and
    - (4) this information is submitted within 60 days after completion of the activity; or
    - (5) the activity is a course approved by a university, college, or other institution of higher education for credit towards a bachelors degree, and is an area directly related to the activities of commercial or noncommercial applicators, and the following applies:
      - (A) the applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of sponsor, instructor's name and address, proof of attendance, date, time, and place of activity; and
      - (B) this information is submitted within 60 days after completion of the activity.
  - (v) An applicator may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension shall be granted by the department if the applicator files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.
  - (w) Any person who is issued an initial license on or after September 1 in any year and has not been licensed at any time during the preceeding nine months, shall begin annual recertification requirements the following year and need not obtain any credits between September 1 and December 31 of that year. If credits are obtained during that period, they may be applied to the following year's requirement.
  - (x) Applicators licensed as both private and commercial or noncommercial may satisfy requirements for private applicator recertification by meeting the recertification requirements for commercial and noncommercial applicators.

### **§7.17. Expiration and Renewal of Licenses**

- (a) Each commercial and noncommercial applicator license expires on the last day of February of the year following the year in which it was issued. Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued. An application for a commercial or noncommercial license will be deemed complete when the applicator has met the requirements of §7.12(a) of this title (relating to Commercial Applicator License) and §7.14(a) of this title (relating to Noncommercial Applicator License) and has filed the appropriate license fee. Additionally, in the case of a commercial applicator, a complete application must include the proof of financial responsibility required by the Act, §76.111.
- (b) Failure to file a timely and complete application for renewal by the license expiration date subjects an applicator to a late fee under the Texas Agriculture Code, Chapter 12, and the Act. Applications of restricted-use or state-limited-use pesticides by any commercial or noncommercial applicator after the expiration date of the license and when a complete application has not been filed with the department can subject the applicator to additional penalties.
- (c) If a complete application for renewal of a commercial, noncommercial or private applicator's license is not submitted within one year after the expiration of the license, the license will be deemed to be terminated voluntarily and a renewal application will not be accepted. Before being licensed again, the applicator must meet the requirements for a new license.
- (d) Pursuant to the Act, §76.113, the head of the licensing agency in determining whether additional training shall be required of current licensees before renewal of their applicator license may consider changes in technology, pesticide related problems, or the performance of individual applicators. If general retraining and/or retesting is required for all applicators in a category or subcategory, the licensing agency will publish notice at least six months in advance of the license renewal date. If individual retraining and/or retesting is required as a result of the applicator's performance, the agency may give notification and set a time and place of retraining that would be in the best interest of public health and environmental protection.

### **§7.18. Records**

- (a) The records of all pesticide uses required to be kept by commercial and noncommercial licensees under provisions of the Texas Agriculture Code, §76.114, shall at a minimum include the following:
  - (1) the date and time of day each application started;
  - (2) the name of the person for whom the application was made (owner or lessee);
  - (3) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties;
  - (4) the pesticide applied, including:
    - (A) product name;
    - (B) its EPA registration number;
    - (C) rate of product per unit; and
    - (D) total volume of spray mix, dust, granules, or other materials applied per unit;
  - (5) the name of the pest for which it was used;
  - (6) the site treated (for example: name of crop, kind of animal, etc.);
  - (7) total acres or volume of area treated;
  - (8) wind direction and velocity and air temperature;
  - (9) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, or decal number affixed to the application unit; and
  - (10) the name and department license number of the applicator.
- (b) The record of each pesticide application shall be kept current and maintained at the applicator's principal place of business as designated on the applicator's application/renewal for a pesticide applicator's license. The record for each application shall contain all of the above information. The licensee shall make these records available for inspection by the regulatory agency upon request. The regulatory agency may examine these records at any time during normal business hours, or, by written request, require the licensee to submit a copy of these records.

- (c) Subsection (a) of this section shall not apply to application of Livestock Protection Collars or M-44 Sodium Cyanide. Recordkeeping requirements specified in §7.28 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar—State-Limited-Use Requirements) and §7.29 of this title (relating to M-44 Sodium Cyanide—State-Limited-Use Requirements) and record requirements specified in the United States Environmental Protection Agency approved labeling, shall apply to these pesticides.

#### **§7.19. Registration and Inspection of Equipment**

- (a) Application equipment used for commercial applications, except pressurized hand-sized apparatus or any equipment or device for which the person applying the pesticide is the source of power or energy used in making pesticide application, must be registered with the department. The department shall issue a license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:
- (1) an identification number; and
  - (2) the name of the issuing agency.
- (b) Notification shall be given to the department of any equipment ownership changes and the license decal must be removed before giving up possession of the equipment.
- (c) All application equipment used for commercial applications is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.

#### **§7.20. Complaint Investigation**

- (a) Any person with cause to believe that any provision of the Act or this chapter has been violated may file a written complaint with the department. The department will continue to accept either written or oral notification of a complaint, but may require that a complaint form be signed in order to conduct an investigation.
- (b) Any person who has experienced or is alleging adverse effects from a pesticide application may file a written complaint with the department. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.
- (c) The department will investigate the complaint and make a full written report.
- (1) A preliminary report may be given to the parties directly involved in the incident. In cases where no apparent violations can be documented, the department will give the information to the complaining party and cease the investigation.
  - (2) The final report will be made after all aspects of the case have been determined to the satisfaction of the department. This report will be made available to the parties concerned upon written request. The final report will prevail over the preliminary report if a conflict should arise.
- (d) The department shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.
- (e) The department will not estimate monetary losses sustained.
- (f) No finding of violation by the department will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant, but all such complaints will be investigated routinely. For each such complaint, the department will determine the extent of investigation which is appropriate to address the complaint.

#### **§7.21. Storage and Disposal of Pesticides**

- (a) No person may dispose of, discard, or store any pesticide or pesticide container in a manner that may cause or result in injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollution of any water supply or waterway.
- (b) Pesticides intended for distribution or sale must be displayed or stored within an enclosed building or fenced area, and may not be displayed on sidewalks, parking lots, or similar open areas without surveillance.
- (c) Bulk storage tanks, when not enclosed in a secured fenced area or a building, must have a lock on the dispensing device.
- (d) Pesticides in leaking, broken, corroded, or otherwise unsafe containers, or with illegible labels shall not be displayed or offered for sale. Such containers will be handled in a manner to prevent environmental contamination prior to proper disposal or return to manufacturer.

- (e) Pesticide containers, concentrates, spray mixes, container rinsates, and/or spray system rinsates that are to be discarded shall be disposed of in accordance with pesticide label directions or in accordance with the provisions of the Texas Solid Waste Disposal Act (Texas Civil Statutes, Article 4477-7).
- (f) The applicator, the owner of the pesticide, and/or the person in control of the mixing site shall be jointly and severally liable for proper storage and disposal of pesticide containers and contents. It will be acceptable for any one of the parties involved to assume liability for compliance.
- (g) All pesticide dealers shall have a list of poison control centers in the state or other sources of contact designed to provide medical assistance in emergencies involving pesticide poisoning.

#### §7.22. Use Inconsistent with Label Directions

- (a) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:
  - (1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions, except:
    - (A) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;
    - (B) applying a pesticide against any target pest not specified on the label or labeling if the application is to the crop, animal, or site specified on the label or labeling, unless the department or the Environmental Protection Agency has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment, and has required a statement on the label of the pesticide so stating this determination;
    - (C) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling or unless prohibited by law or regulation;
    - (D) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;
  - (2) tank mixing of pesticides, or using application techniques, or equipment prohibited by the label;
  - (3) failure to observe reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements:
    - (A) it is the responsibility of the person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of this paragraph;
    - (B) if a commercial applicator furnishes the pesticide, it is the commercial applicator's responsibility to notify the person in control of the commodity or site treated of the requirements of this section that pertain to restricted-entry intervals, preharvest intervals, grazing restrictions, or worker protection requirements, prior to, or at the time of treatment by:
      - (i) furnishing a label of the pesticide(s) used;
      - (ii) providing the requirements in writing; or
      - (iii) furnishing a copy of the label sections regarding the information required in this subparagraph;
  - (4) improper storage or disposal of the pesticide or its container.

#### §7.23. State Plan for Certification of Applicators

The Texas Department of Agriculture hereby adopts by reference the State of Texas Plan for Certification of Pesticide Applicators with appendices submitted by the department to the administrator of the Environmental Protection Agency pursuant to the requirements of 7 United States Code, §136(b)(2). A copy of the plan may be obtained upon request from the department.

#### §7.24. State-Limited-Use Pesticides

- (a) Because of their potential to cause adverse effect to nontargeted vegetation, all pesticide products containing the active ingredients as specified in this subsection, alone or in mixtures, shall be classified as state-limited-use pesticides when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively: *2,4-Dichlorophenoxyacetic acid (2,4-D)*; *2,4-Dichlorophenoxy butyric acid (2,4-DB)*; *2,4-Dichlorophenoxy propionic acid (2,4-DP)*; *2-Methyl-4-Chlorophenoxyacetic acid (MCPA)*; *3,6-Dichloro-o-anisic acid (dicamba)*; *3,4-Dichloropropionanilide (propanil)*; *5-bromo-3-sec-butyl-6-methyluracil (bromacil)*; and *2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon)*. Formulations containing the active ingredients previously listed in this subsection are exempt from being classified as state-limited-use pesticides if they meet one of the criteria listed in paragraphs (1) or (2) of this subsection:



- (1) specialty fertilizer mixtures packaged in containers of 50 pounds or less that are labeled for ornamental use and registered as required in the Texas Agriculture Act, Chapter 63, concerning commercial fertilizer;
  - (2) products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.
- (b) Because of their potential to cause adverse effects to humans and nontarget animals, any and all pesticides and devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide, in any quantity, for livestock predation control are classified as state-limited-use pesticides. Additional requirements for the handling and use of Compound 1080 and sodium cyanide are provided at §7.28 and §7.29 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar—State-Limited-Use Requirements; and the M-44 Sodium Cyanide—State-Limited-Use Requirements).

#### **§7.25. Scope of Pesticide Application Standards**

- (a) Purpose. The purpose of §§7.25-7.27 of this title (relating to Pesticides) is to establish pesticide application standards designed to prevent unreasonable risk to human health and protect workers and others during the production of agricultural field crops.
- (b) Worker Protection Standard Training Verification Requirements. All certified and licensed applicators or trained trainers who conduct pesticide safety training must:
  - (1) maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee, with the verification card number issued to the trainee, and the city or county and state where the training occurred;
  - (2) issue EPA training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;
  - (3) record trainee information on the verification cards, in ink or other indelible form;
  - (4) issue EPA training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and
  - (5) promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training verification cards.
- (c) The EPA WPS warning flag/sign. EPA WPS warning flag/sign referred to in WPS and §7.26 of this title (relating to Notification Requirements) must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high. For nursery and green house operations, the warning sign/flag may meet the minimum requirements as approved by the EPA.



#### **§7.26. Notification Requirements**

- (a) Responsibility. Except as provided in subsection (n) of this section, the farm operator shall be responsible for meeting prior notification requirements.
- (b) Exemption from notification requirements. All applications of pesticides by ground application equipment, except airblast or mistblowing equipment, are exempted from this section.
- (c) Who may request. The following persons may request prior notification of a pesticide application:
  - (1) any person who works or resides in a building, house, or other structure located on land adjoining and within 1/4 mile of a field on which pesticides may be applied;

- (2) persons in charge of licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics or nursing homes within 1/4 mile of the field on which pesticides are to be applied. The parent of a primary or secondary school student may for good cause request notification from the department if the person in charge of the school has refused to request notification. If the department determines that notification should be given, the department shall notify the farm operator to give notification to the person in charge of the school; and
- (3) any person with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure and whose residence or place of employment is within 1/4 mile of the field on which pesticides are to be applied.
- (d) Content of request. Except as provided in subsection (n) of this section, requests for prior notification under this section shall be made in writing to the farm operator, and should include:
  - (1) the name and address of the person making the request;
  - (2) one home and business telephone number at which the person making the request can be reached and the hours that such person is normally at each number;
  - (3) the date of the request;
  - (4) the location of the field for which the request for notification is being made;
  - (5) a request to be notified prior to the application of any pesticides to the area described in paragraph (4) of this subsection or the trade name and/or common chemical name of specific pesticides for which prior notification is requested; and
  - (6) a request to be notified because of a medical condition that may be aggravated by pesticide exposure. Such requests must contain a licensed physician's signed confirmation of the medical condition.
- (e) Certified mail preferred. Requests for prior notification should be sent by certified mail. It shall be the responsibility of the person making the request to retain copies of the request and the return receipts of certified letters.
- (f) Length of effectiveness and commencement of notification. A request for prior notification shall be effective through December 31 of the year that the request is received. A farm operator shall commence notifying a requesting party of scheduled pesticide applications within ten days of receipt of a request for notification. The department may extend the time to begin notifying a requesting party upon a showing of sufficient cause by the farm operator. The department shall notify the requesting party of any such extension.
- (g) Notification. The following methods may be used for giving notification of a scheduled pesticide application.
  - (1) General requests. Except as provided by subsection (n) of this section if the request for notification is made pursuant to this section, the notification may be made by:
    - (A) raising a flag/sign.
      - (i) the EPA WPS posted warning flag/sign shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any person requesting notification.
      - (ii) in the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited access fields, the farm operator may raise a flag/sign at a distance greater than 650 yards from the nearest property line of the party requesting notification on a permanent pole to a height visible from the property line of the requesting party.
      - (iii) The telephone number of the farm operator shall be on or near the flag/sign, and the flag/sign shall be raised on the border of the field at a location to which the public has access for the purpose of reading the telephone number. The farm operator shall provide the name of the pesticide and the intended date and approximate time of the scheduled application when requested by the requesting party;
    - (B) giving notification in writing, in person, or by telephone in English or, when appropriate, Spanish; or
    - (C) other means mutually agreed upon by both parties. This agreement must be in writing and a copy filed with the department.
  - (2) Medical condition. If the request for notification is made pursuant to a medical condition, notification must be given in person or by telephone in English or, when appropriate, Spanish.
    - (A) If the farm operator is unable to reach a person entitled to notification under this paragraph after making reasonable efforts, the farm operator may immediately notify the department by telephone of the following information:
      - (i) the name and telephone number(s) of the farm operator;

- (ii) the name and telephone number(s) of the requesting party;
  - (iii) the location of the field scheduled to be treated;
  - (iv) the intended date and approximate time of the pesticide application; and
  - (v) the trade and common chemical name of the pesticide.
- (B) The department shall maintain a record of the information provided by the farm operator.
- (C) If the farm operator telephones the department between 8:00 a.m. and 5:00 p.m., Monday through Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department.
- (3) Licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics, nursing homes. If the request for notification is made pursuant to subsection (c)(2) of this section, notification may be given in person or by telephone in English or, when appropriate, Spanish. Alternatively, if mutually agreed by the farm operator and the person in charge of any such facility, notification may be given to such facilities by posting a flag/sign at a designated location.
- (4) Farm labor camps. No request is necessary for prior notification of camps owned, managed, or controlled by the farm operator and located on the field; or licensed farm labor camps located on the field or within 1/4 mile of the field on which pesticides are to be applied. Notification shall be provided by telephone or in person to the head of each household. Alternatively, the farm operator may provide notification in writing by placing a written notice on a bulletin board to which the camp has access.
- (5) Record of notification. A farm operator may notify the department that the farm operator has given or been unable to give a notification by telephone or in person to establish a record of such notice. The department shall maintain a record of such notification from operators to the department. It is a violation of this section to provide false information to the department about efforts to reach a requesting party or about failure to receive such notification.
- (h) Content of notice. Notice given in writing, in person, or by telephone shall include:
- (1) the intended date and approximate time of application;
  - (2) the trade and common chemical name, if requested, of the pesticide to be applied; and
  - (3) the location of the field on which the application is to be made.
- (i) Time and receipt of notice. Notice shall be given not later than on the day prior to a scheduled pesticide application.
- (1) Notice shall be deemed given pursuant to subsection (g)(1) and (3) of this section:
    - (A) at the time of delivery (in person, in writing, or by telephone) to the requesting person or at the time of delivery to the address provided in the request for prior notification;
    - (B) when the required flag/sign is raised; or
    - (C) as mutually agreed upon pursuant to an agreement authorized by subsection (g)(1)(C).
  - (2) Notice shall be deemed given pursuant to subsection (g)(4) of this section at the time of delivery of notification in person, by telephone, or by posting the required notice:
    - (A) at the time of delivery of notification in person or by telephone; or
    - (B) after the farm operator has made reasonable efforts to notify the requesting party by telephoning the requesting party at the number(s) provided during the time(s) specified in the written request.
- (j) Emergency. Advance notice need not be given on the day before when an immediate application is required and time does not reasonably allow the giving of notice on the day before a pesticide application. Notice of an emergency application shall be given:
- (1) by the method selected pursuant to subsections (g)(1), (3) and (4) of this section as soon as reasonably possible before the application; or
  - (2) by telephone or in person to medically affected persons as soon as reasonably possible before the application. In no event shall notice of an emergency application to medically affected persons be given less than one hour before the scheduled application. However, an emergency application need not be postponed if after reasonable efforts by the farm operator actual notice cannot be given.
- (k) Removal of flags/signs. Flags/signs raised under this section should be removed or lowered within 24 hours after the reentry interval expires. However, in no event shall such flags/signs be left posted for more than 72

hours after the reentry interval has expired. In the event that a pesticide application is not made when scheduled, the flag/sign may be left posted until after the reentry interval has expired.

- (l) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the farm operator promptly and in writing of any change of address or telephone number. Notice need not be given at any vacant structure or premises, or at any structure or premises which is not the place of residence or business of a person entitled to notice under this section.
- (m) All complaints filed under this section shall be reviewed and investigated by the department in the same manner as any other complaints filed under the Texas Administrative Procedure Act.
- (n) Applications by the Texas Boll Weevil Eradication Foundation or other areawide pest control program sponsored by a governmental entity.
  - (1) Responsibility. For applications made by the foundation as part of its boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm operator is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.
  - (2) Who may request. A request for notification of an application made by an entity covered by this subsection may be made by all of those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.
  - (3) Filing and content of request. Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include all of the information required by subsection (d) of this section.
  - (4) Notification by farm operator. The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:
    - (A) by telephone at a telephone number obtained from the department;
    - (B) by forwarding the written request to the foundation or other entity in the U.S. mail at a mailing address obtained from the department; or
    - (C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.
  - (5) Request for notification by the foundation or other entity. Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.
  - (6) Effective date and length of effectiveness of request. A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within 10 days of receipt of a request for notification.
  - (7) Methods of notification and content of notice.
    - (A) Notification shall be provided as follows.
      - (i) Notification may be given in writing, by raising a flag/sign in the manner provided at (g)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.
      - (ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, the foundation or other entity may immediately notify the department by telephone of the following information:
        - (I) the name and telephone number(s) of the foundation or other entity;
        - (II) the name and telephone number(s) of the requesting party;



- (III) the location of the field scheduled to be treated;
- (IV) the intended date and approximate time of the pesticide application; and
- (V) the trade and common chemical name of the pesticide.
- (iii) The department shall maintain a record of the information provided by the foundation or other entity.
- (iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday-Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department.
- (v) In addition to the methods of notification provided at this subparagraph, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.
- (B) The notice shall include:
  - (i) the location of the field on which the application is to be made;
  - (ii) the intended date and approximate time of application;
  - (iii) the trade and common chemical name of the pesticide to be applied; and
  - (iv) who to contact for additional information.
- (C) Notice shall be given no later than the day prior to a scheduled pesticide application.
- (8) Emergency provision. Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an emergency application shall be given:
  - (A) by the method selected in accordance with paragraph (7) (A) of this subsection as soon as reasonably possible before the application; or
  - (B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an emergency application need not be postponed if after reasonable efforts by the foundation or other entity actual notice cannot be given.
- (9) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

#### **§7.27. Forbidden Pesticide Practices**

The pesticide applicator shall be responsible for complying with the following standards:

- (1) Direct spray forbidden. Pesticides may not be applied if persons not involved with the application of the pesticide are lawfully present in the area to be treated.
- (2) Duty to stop application. The applicator shall stop the application of a pesticide if any person not wearing appropriate protective clothing lawfully enters the area to be treated.
- (3) It is a violation of these regulations for any person employed by a farm operator to knowingly enter an area to which pesticides have been applied and the restricted-entry interval has not expired or to which pesticides are being applied without the authorization of the farm operator.

#### **§7.28. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar—State-Limited-Use Requirements**

- (a) Purpose. Any and all pesticides and devices using the active ingredient sodium fluoroacetate for livestock predation control shall be classified as state-limited-use, pursuant to the Act, §76.003.
- (b) Definitions. In addition to the definitions set out in the Act, §76.001, and §7.1 of this title (relating to Definitions), the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) *LPC applicator*—A person who has obtained a license from the department as a private, commercial or non commercial applicator or who has obtained a private applicator certificate and has fulfilled the requirements for livestock protection collar certification as set forth in this section. Private applicators may certify to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control. Employees of government agencies who apply collars in administration of official duties or persons that apply collars on their own or employer's property may obtain a livestock protection collar certification under a noncommercial license. Persons operating a busi-

ness or employed by a business to apply livestock protection collars on the property of another for hire must obtain livestock protection collar certification under a commercial applicator license.

- (2) *Livestock protection collar*—A collar-like device which has been filled with the active ingredient sodium fluoroacetate (Compound 1080) to control predation.
  - (3) *Registrant agent*—A representative of a registrant. Each registrant agent must be a licensed pesticide dealer, a licensed private, commercial or noncommercial applicator certified in the livestock protection collar subcategory, and approved by the department to distribute livestock protection collars to approved LPC applicators.
  - (4) *Collar pool agent*—A person designated by the department to operate a livestock protection collar pool. Each collar pool agent must be a licensed pesticide dealer, a certified private applicator certified in the livestock protection collar subcategory, or a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory and approved by the department to distribute livestock protection collars to approved LPC applicators.
- (c) Distribution requirements. Registrants, registrant agents and collar pool agents distributing livestock protection collars must meet the following requirements.
- (1) Each registrant must obtain a license under the Act, §76.071, and comply with the provisions of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers).
  - (2) Each registrant and registrant agent who distributes livestock protection collars must obtain a license as a private, commercial or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Each collar pool agent who distributes livestock protection collars must possess a private applicator certification and obtain certification in the livestock protection collar subcategory or obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Collars shall be distributed only by registrants or agents and only to certified livestock protection collar applicators.
  - (3) Livestock protection collars may not be distributed by registrants or agents to persons other than registrants or agents for the purpose of resale or transfer.
  - (4) Each registrant may designate registrant agents and shall file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent. The registrant shall notify the department of any change in this information within ten days. The department shall notify the registrant in writing if the agent is approved or disapproved.
  - (5) Each livestock protection collar shall have a unique serial number clearly and firmly affixed to it.
  - (6) Registrants and agents shall dispose of livestock protection collars strictly in accordance with label directions.
  - (7) Registrants and agents shall distribute the forms prescribed by the department for use by LPC applicators with each distribution of livestock protection collars.
  - (8) Registrants and agents shall report to the department any incident or complaints of misuse involving a livestock protection collar.
- (d) Certification of LPC applicators.
- (1) A person may obtain certification as either a private, commercial or noncommercial applicator.
  - (2) In order to obtain certification as a licensed commercial LPC applicator, a person shall comply with the licensing requirements of §7.12 and §7.13 of this title (relating to Commercial Applicator License and Commercial Applicator Proof of Financial Responsibility), complete livestock protection collar training, pass a test prescribed by the department, and pay the fee prescribed by §7.12 of this title (relating to Commercial Applicator License). The license expiration and renewal requirements of §7.17 of this title (relating to Expiration and Renewal of Licenses), apply to commercial LPC applicators.
  - (3) In order to obtain certification as a licensed noncommercial LPC applicator, a person shall comply with the licensing requirements of §7.14 of this title (relating to Noncommercial Applicator License), shall complete livestock protection collar training, pass a test prescribed by the department, and submit an application prescribed by the department and pay the fee prescribed by §7.14 of this title (relating to Noncommercial Applicator License).
  - (4) In order to obtain certification as a private LPC applicator, a person must possess a valid private applicator certificate or obtain a private applicator license in accordance with §7.15 of this title (relating to Private Applicators) and complete the livestock protection collar training program and pass a test prescribed by the department. No testing fee will be collected from private applicators.

- (5) All LPC applicators must recertify as required by §7.16 of this title (relating to Applicator Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. Government employees who hold a current fee exempt noncommercial license must surrender the license within 30 days of termination of government employment and may convert to a fee paid license if the certification is in force by making application to the department within six months of the termination date. Retraining and retesting may be required by the department for any LPC applicator who fails to comply with the use, recordkeeping, or other requirements of the department.
- (e) LPC applicator training. LPC applicators must undergo training, including training in the following areas:
- (1) the proper use of the livestock protection collar;
  - (2) the proper method of disposing of collars and contaminated materials;
  - (3) health and safety hazards, safe handling techniques, and emergency treatment in cases of accidental exposure;
  - (4) recordkeeping and reporting requirements;
  - (5) proper methods of identifying causes of predation; and
  - (6) approved methods of predator management.
- (f) LPC applicator use restrictions. All LPC applicators shall comply with the label, including the use restrictions, when using the livestock protection collar. Copies of the label and applicator record forms shall be obtained with the purchase or transfer of any collar from a registrant or agent. Additional copies of the label and forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.
- (g) Recordkeeping and reporting.
- (1) Each registrant shall maintain records for the registrant and all registrant agents shall maintain records on forms prescribed by the department for at least two years which include:
    - (A) an inventory of Compound 1080 and an inventory of livestock protection collars including the serial number, size, type of straps, number of straps, and configuration for each collar. An annual production report shall be filed on forms prescribed by the department by each registrant by January 31 for the previous calendar year reporting on the number and type of livestock protection collars produced and distributed and on the quantity of Compound 1080 purchased and used;
    - (B) information on all distributions to applicators or agents, including:
      - (i) the date of distribution;
      - (ii) the name, telephone number, address, and applicator license number of each LPC applicator who purchased or received a collar;
      - (iii) the number of livestock protection collars distributed; and
      - (iv) the serial number of each collar.
    - (C) A record of all distributions of collars by a registrant or agent shall be submitted to the department monthly. A report is not required for months in which a distribution does not occur.
  - (2) Each collar pool agent shall notify the department monthly of all distributions of collars and shall maintain records for at least two years, including:
    - (A) the date of distribution or receipt of collars;
    - (B) the name, telephone number, address, and applicator license number of each LPC applicator who purchased, transferred, or received a collar;
    - (C) the number of livestock protection collars distributed;
    - (D) the serial number of each collar; and
    - (E) the names and addresses of collar pool members.
  - (3) Each LPC applicator shall maintain records on the use of the collar on forms prescribed by the department. The records shall include:
    - (A) the serial number of the collar attached to livestock;
    - (B) the pasture(s) where collared livestock were placed;
    - (C) the dates of each attachment, inspection, and removal;
    - (D) the number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage;

- (E) the number, dates, and approximate location of collars lost;
  - (F) the species, locations, and dates of all animals suspected to have been killed by collars;
  - (G) all suspected poisonings of humans, domestic animals or nontarget wild animals resulting from collar use and all other accidents involving the release of Compound 1080; and
  - (H) number of collars in storage.
- (4) Each LPC applicator shall maintain a copy of collar use records for at least two years.
  - (5) Each registrant, agent, or LPC applicator shall report accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals or nontarget wild animals to the department immediately (within one working day) by telephone.
  - (h) Loading Compound 1080 into collars. Only the registrant or the collar manufacturer is authorized to fill collars with Compound 1080 solution. Only Compound 1080 purchased from the registrant after November 1, 1986, and containing a distinguishing dye, may be used in the livestock protection collar.
  - (i) Instructions to noncertified applicators working under the supervision of a licensed LPC applicator. The licensed LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person as required by §7.30 of this title (relating to Supervision) before the noncertified person may handle the collar. Licensed commercial LPC applicators must be physically present to supervise use of collars by noncertified applicators. Certified private applicators authorized to apply collars may not supervise any person using collars.

#### **§7.29. M-44 Sodium Cyanide—State-Limited-Use Requirements**

- (a) Purpose. Any and all pesticides and devices using sodium cyanide as the active ingredient, including the M-44 device for livestock predation control, shall be classified as state-limited-use pesticides, pursuant to the Act, §76.003. However, this section shall not apply to the use of M-44 sodium cyanide by employees of the Texas Animal Damage Control Service when performing official duties and using M-44 cyanide capsules under the federal government registration.
- (b) Definitions. In addition to the definitions set out in the Act, §76.001 and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.
  - (1) *Authorized dealer*—A dealer licensed under the Act, §76.071, and specifically approved by the department to distribute M-44 sodium cyanide.
  - (2) *M-44 applicator*—A person who has obtained authorization from the department for the use of M-44 sodium cyanide.
  - (3) *M-44 sodium cyanide*—Includes the active ingredient sodium cyanide, sodium cyanide capsules, and any device loaded with sodium cyanide for use in livestock predation control.
- (c) Distribution requirements. Dealers distributing M-44 sodium cyanide must meet the following requirements.
  - (1) All dealers who wish to distribute M-44 sodium cyanide must obtain written approval by the department. In order to obtain approval to handle M-44 sodium cyanide from the department, dealers must obtain from the department a pesticide dealer's license to handle restricted pesticides and complete special agreement forms to become an authorized dealer for the purpose of distributing M-44 sodium cyanide. All dealers must meet the dealer requirements of the Act, §§76.071-76.077, the requirements of §7.8 of this title (relating to Authorized Pesticide Users and Pesticide Dealers), and any additional federal requirements of the use restriction bulletin (label) for M-44 sodium cyanide under EPA Registration Number 33858-2.
  - (2) An authorized dealer may distribute M-44 sodium cyanide only to M-44 applicators or registrants of M-44 sodium cyanide. M-44 sodium cyanide may not be distributed or transferred by a dealer to any person for the purpose of resale or transfer with the exception of registrants.
  - (3) The department will keep a list of approved dealers and make it available to all certified applicators. Only dealers whose names appear on the list are authorized to receive or distribute M-44 sodium cyanide.
  - (4) Each authorized dealer must be or employ a person certified under this section.
  - (5) Each dealer must maintain for a period of two years complete records on forms prescribed by the department of all transactions involving M-44 sodium cyanide, including:
    - (A) the amount of materials purchased by dealer and date of purchase;
    - (B) the following information for each distribution:
      - (i) the date of distribution;



- (ii) the name, address, applicator number, county, and telephone number of any M-44 applicator to whom M-44 sodium cyanide was distributed; and
  - (iii) the amount distributed to the approved applicator.
- (6) Dealers must make sure that any distribution of M-44 sodium cyanide is accompanied by a complete label. Authorized dealers must also provide to M-44 applicators the recordkeeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten each, in boxes of 25 each, or in boxes of 50 each.
- (7) Authorized dealers must obtain the department's approval prior to purchasing any M-44 sodium cyanide.
- (8) Each authorized dealer must report to the department any incident or complaint of misuse involving M-44 sodium cyanide.
- (d) M-44 applicators. Any person seeking to qualify as an M-44 applicator must possess a current private applicator certification or license, or a noncommercial applicator license with certification in the predatory animal control subcategory, regulatory pest control category or demonstration and research category, or a commercial applicator license with certification in the predatory animal control subcategory. All applicators must undertake training prescribed by the department and obtain certification for M-44 use.
- (1) Training for M-44 applicators will include the following:
- (A) the proper use and treatment of the M-44 sodium cyanide;
  - (B) the proper method of disposing of M-44 sodium cyanide and related contaminated materials;
  - (C) safe handling techniques designed to reduce health and injury risks;
  - (D) recordkeeping requirements;
  - (E) proper methods of identifying causes of predation; and
  - (F) approved methods of predator control.
- (2) All M-44 applicators must comply with the label including the use restrictions bulletin on M-44 sodium cyanide issued by the department (EPA Registration Number 33858-2) when using M-44 sodium cyanide. Copies of the use restrictions must be obtained with the purchase of each box of M-44 sodium cyanide. Additional copies of the bulletin and recordkeeping forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.
- (e) Recordkeeping. Each applicator shall maintain records on forms prescribed by the department dealing with the placement of the device and the results of each placement. Such records shall include, but may not be limited to:
- (1) the number of M-44 sodium cyanide devices in place;
  - (2) the location of each M-44 sodium cyanide device;
  - (3) the dates of each placement, inspection, and removal;
  - (4) the number and location of M-44 sodium cyanide devices which have been discharged and the apparent reason;
  - (5) species of animals taken; and
  - (6) all accidents or injuries involving humans, domestic animals, wildlife, or bodies of water.

### **§7.30. Supervision**

- (a) If there is a discrepancy between supervision requirements between federal laws or regulations, state laws or regulations, or the pesticide label, the supervision requirement that requires the greatest degree of direct supervision by the licensed applicator must be practiced. Licensed applicators may only supervise application of pesticides for categories or subcategories in which they are certified.
- (b) A business that applies a restricted-use or state-limited-use pesticide to the land of another for hire must be operated by or employ a licensed commercial applicator. An application of a restricted-use or state-limited-use pesticide can only be made by the licensed commercial applicator or by persons under the licensee's direct supervision during which time the licensee must be continuously physically present. A person may apply a restricted-use or state-limited-use pesticide under the direct supervision of a licensed commercial applicator only if the person is under the instruction and control of the commercial applicator and the commercial applicator is on the site where the application of the pesticide is being made and can observe and converse with the person under supervision. A licensed commercial applicator is responsible for the actions of any person working under the licensee's direct supervision. A licensed commercial applicator is not required to be continuously physically present during the transporting of a restricted-use or state-limited-use pesticide in any type of distrib-

uting or transporting equipment ready for application, mixing, loading, storing, and handling in packages or containers that have been opened, disposing of pesticides, and/or the cleaning of equipment used in the application of pesticides by a person working under the direct supervision of that licensed applicator. The licensee must, however, assure that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual, as specified in subsection (d) of this section.

- (c) A licensed noncommercial applicator or licensed private applicator is not required to be physically present at the time and place of a pesticide application to exercise direct supervision of application of a restricted use or state-limited-use pesticide, but the licensed noncommercial or private applicator must always be available when and if needed. The licensed applicator is responsible for any person working under the licensee's direct supervision.
- (d) Each licensed applicator is responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. Working includes transporting a restricted-use or state-limited-use pesticide in any type of distributing or transporting equipment ready for application; mixing, storing and handling in packages or containers that have been opened; and applying and disposing of restricted-use or state-limited-use pesticides and cleaning equipment used to apply the pesticide. At a minimum, instructions shall include a review of appropriate sections of the Texas pesticide law and the Texas pesticide regulations, and reading of complete labeling information for the particular use of the pesticide product being applied. To verify that appropriate instructions have been given to a nonlicensed person, the licensed applicator must verify or provide handler training to the nonlicensed applicator in accordance with the requirements of WPS.
- (e) A private applicator may not supervise the use of restricted-use or state-limited-use pesticides by an unlicensed or noncertified applicator unless the private applicator has completed the Extension private applicator training program, obtained a passing score on the private applicator examination, and obtained a private applicator license from the department as specified in the Act, §76.112.

#### **§7.31. Expiration Provision**

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

#### **§7.36. Expiration Provision**

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 1996.

## **THE TEXAS HERBICIDE LAW**

### **CHAPTER 75. HERBICIDE REGULATION**

#### **75.001. Purpose**

The purpose of this chapter is to regulate the distribution, use, and transportation of certain herbicides to prevent a hazard to desirable vegetation.

#### **75.002. Definitions**

In this chapter:

- (1) *Application* of a herbicide means the spreading of a herbicide on real property having a continuous boundary line.
- (2) *Commercial Applicator* means a person who applies a herbicide to land belonging to another person for hire.
- (3) *Distribute* means offer for sale, hold for sale, sell, barter, or supply.
- (4) *Equipment* means a device used to apply a herbicide.

#### **75.003. Regulated Herbicides**

- (a) After a public hearing on the issue, and in accordance with Subsection (b) of this section, the department by rule may adopt a list of regulated herbicides for the state or for one or more designated areas in the state.
- (b) The department may include a herbicide on the list of regulated herbicides if the department determines that, if used as directed or in accordance with widespread and commonly recognized practice, the herbicide requires additional restrictions to prevent a hazard to desirable vegetation through drift or other uncontrolled application.

#### **75.004. Dealer's License**

- (a) A person may not distribute a regulated herbicide unless the person has a dealer's license from the department.
- (b) A person must obtain a license for each location in the state that is used for distribution. If the person does not have a place of business in this state, the person may obtain one license for all out-of-state locations, but must designate an agent for service of process in this state before the department may issue the license.
- (c) A person must apply for a dealer's license under this section on a form prescribed by the department.
- (d) The department by rule shall set the fee for a dealer's license.
- (e) A dealer's license expires December 31 of each year.
- (f) A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

#### **75.005. Record of Distribution**

- (a) A person required to obtain a dealer's license by Section 75.004 of this code shall record each distribution of a regulated herbicide and shall keep a copy of the record for at least two years after the date of the distribution.
- (b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.
- (c) The department may require that a copy of the records required by this section be submitted periodically to the department. The copies submitted to the department are public information.
- (d) The department may revoke a dealer's license if the licensee fails to submit a copy of a record as required under Subsection (c) of this section.

#### **75.0055. Denial, Revocation, Modification, or Suspension of License**

- (a) The department may deny an application for a dealer's license if the applicant fails to comply with this chapter. The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.
- (b) If a license suspension is probated, the department may require the person to:
  - (1) report regularly to the department on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the department; or
  - (3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.
- (c) If the department proposes to deny a person's application for a license or revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

#### **75.006. Permit**

- (a) Except as provided by Subsection (b) of this section, during a period in which the commissioners court of a county has determined, as provided by Section 75.021(a) of this code, the existence in the county of a crop or vegetation of value that is susceptible to being adversely affected by the application of a regulated herbicide, a person must obtain a permit from the department before applying the regulated herbicide in the county.
- (b) The department may exempt from the permit requirement under Subsection (a) of this section a county or portion of a county during a period the department determines a crop or vegetation of value susceptible to being adversely affected from application of a regulated herbicide does not exist in the county or portion of the county.
- (c) The department by rule may exempt from the permit requirement of this section:

- (1) a particular type of application of a regulated herbicide, including an application for structural pest control purposes by an applicator licensed by the Texas Structural Pest Control Board or a nurseryman licensed by the department in turf weed control for structural pest control applications; or
- (2) a governmental body.
- (d) If the department finds that a type of application of a regulated herbicide does not create a hazard in a particular area, the department by rule shall exempt that area from the permit requirement of this section.
- (e) A permit to apply a regulated herbicide is not required for experimental work with a regulated herbicide by the department, a recognized college or university, the United States Department of Agriculture, a governmental body, or a public organization if the entity gives written notice of the work to the department and does the work in accordance with rules adopted by the department. The department may exempt those entities from any other requirement of this chapter or rule adopted under this chapter.

#### **75.007. Inspection Before Issuing Permit**

Before issuing a permit to spray a regulated herbicide, the department is entitled to enter and inspect the area to be sprayed and the area surrounding it.

#### **75.008. Types of Permits**

The department may issue:

- (1) an individual permit to apply a regulated herbicide; or
- (2) a blanket permit.

#### **75.009. Powder or Dry Herbicides**

The department may not issue a permit to apply a powder or dry-type regulated herbicide unless:

- (1) all particles of the herbicide can pass through a U.S. standard 10-mesh sieve; and
- (2) not more than one percent of the particles can pass through a U.S. standard 60-mesh sieve.

#### **75.010. Term of Permit**

A permit to apply a regulated herbicide expires:

- (1) when the herbicide has been applied to the area described by the permit;
- (2) when all acreage for which the permit was granted has been treated; or
- (3) if the acreage is not treated, on the 180th day after the day on which the permit was issued.

#### **75.011. Refusal, Amendment, or Revocation of Permit**

The department may amend, revoke, or refuse to grant a permit to apply a regulated herbicide.

#### **75.012. Application of Regulated Herbicide**

- (a) If a person applies a regulated herbicide, the person shall act in accordance with rules adopted by the department, including rules adopted under Subchapter E, Chapter 76, of this code regulating application of pesticides that the department adapts to apply to regulated herbicides.
- (b) If a regulated herbicide is applied by a commercial applicator, the person in control of the crop or land to which the regulated herbicide is applied and the commercial applicator jointly are responsible for ensuring that the application is in compliance with this chapter and the rules adopted by the department, except as provided by Subsection (d).
- (c) If the department finds that an application of a regulated herbicide is hazardous to crops or valuable plants in an area, the department may prohibit the application of a regulated herbicide in that area for the period during which the hazard exists.
- (d) The person in control of the crop or land to which the regulated herbicide is applied is not responsible for damages resulting from the application or for ensuring that the application is in compliance with this chapter and the rules adopted by the department if:
  - (1) the regulated herbicide is applied under a local, state, or federal government program that requires the application of a regulated herbicide to the crop or land; and
  - (2) the person in control of the crop or land to which the regulated herbicide is applied does not control or have a right to control the time and manner of the application of the regulated herbicide to the crop or land.



#### **75.013. Applicator s Records**

- (a) Except as provided by Subsection (d) of this section, each person who applies a regulated herbicide shall record each application of a regulated herbicide that he or she makes and shall keep a copy of the records for a least two years after the date the application was made.
- (b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.
- (c) The department may require all persons who apply a regulated herbicide to submit periodically to the department a copy of the records required by this section.
- (d) A person, other than a commercial applicator, who applies a regulated herbicide to a lawn is not required to make and keep the records required by Subsection (a) of this section for that application of a herbicide.

#### **75.014. Proof of Financial Responsibility**

- (a) Except as otherwise provided by this section, each applicant for a commercial applicator's license shall file with the department:
  - (1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or
  - (2) a liability insurance policy or certification of a policy protecting people who may suffer adverse effects as a result of the applicant's operations.
- (b) If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (a) of this section, the department shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.
- (c) If the State Board of Insurance determines after giving notice to the department that the liability insurance policy required by Subsection (a)(2) of this section is not generally and reasonably available to commercial applicators, then in lieu of the requirements of Subsection (a) of this section, the applicant may:
  - (1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation a certificate of deposit or letter of credit in the amounts prescribed by Subsection (f) of this section, made payable to the department and issued for the purpose of protecting people who may suffer adverse effects as a result of the operations of the commercial applicator;
  - (2) file a property damage and personal injury insurance policy or certification of the insurance that is generally and reasonably available as determined by the State Board of Insurance; or
  - (3) comply with other proof of financial responsibility requirements adopted by rule of the department under this chapter.
- (d) The proof of financial responsibility required by this section is not required to cover adverse effects to agricultural crops, plants, or land being worked on by the commercial applicator.
- (e) The proof of financial responsibility required by this section must be approved by the department and conditioned on compliance with this chapter and rules adopted under this chapter.
- (f) Except as otherwise provided by this section, the amount of financial responsibility may not be less than \$100,000 for property damage and may be not less than \$100,000 for bodily injury. The commissioner by rule may require different amounts of coverage for different classifications of operations under this chapter. During the entire period for which a license is issued, the coverage must be maintained at not less than the amount set by the commissioner or the State Board of Insurance, as applicable.
- (g) At least 10 days before any reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the commissioner. If the party does not give that notice, the liability of the surety or insurer is limited to the amount of the bond or liability insurance policy.
- (h) Except as provided by this subsection, the commissioner may accept a bond or liability insurance policy in the amount required by this section that has a deductible clause in an amount of not more than \$1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the deductible amount in a prior legal claim, the commissioner may not accept a bond or policy with a deductible clause unless the applicant furnishes to the department a surety bond that satisfies the amount of the deductible as to all claims that may arise as a result of the applicant's operation.
- (i) If notified that the security furnished under this section has become insufficient or otherwise unsatisfactory, a commercial applicator immediately shall file a new bond, liability insurance policy, or other proof of financial responsibility as authorized by rule of the department. An individual holding a commercial applicator's license may not operate as a commercial applicator after receiving notice that the security is insufficient or defective until the commercial applicator files new proof of financial responsibility. Failure to file a bond, liability

insurance policy, or other proof of authorized financial responsibility or failure to maintain the security in the required amount is a ground for suspension or revocation of a commercial applicator license.

- (j) The commissioner by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The commissioner may adopt rules governing the conditions and handling of certificates of deposit and letters of credit but may not disburse funds or release a certificate or letter except with the consent of the commercial applicator or pursuant to court order.

#### **75.015. Regulated Herbicide Complaint Report**

- (a) A person claiming adverse effects from application of a regulated herbicide may file with the department a written complaint report. To be eligible for consideration by the department, the complaint report must be filed before the 31st day after the date of the alleged application or, if a growing crop is alleged to have been adversely affected, before the earlier of the date that 25 percent of the crop has been harvested or the 31st day. The complaint report must contain the name of the person, if known, allegedly responsible for the application of the regulated herbicide and the name of the owner or lessee of the land on which the crop is grown and to which adverse effects are alleged to have occurred. The department shall prepare a form to be furnished to persons for use in filing complaint reports. The form may contain other information, within the person's knowledge, that is required by the commissioner.
- (b) As soon as practicable after receiving a complaint report, the department shall notify the licensee, the owner or lessee of the land on which the alleged application occurred, and any other person who may be charged with responsibility for the adverse effects claimed. The department shall furnish copies of the report to those people on request.
- (c) The department may give a preliminary report to the parties directly involved in the incident. In a case in which adverse effects cannot be documented, the department shall give the information to the complaining party and cease the investigation. To assess any adverse effects, the complaining party shall permit the department and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been adversely affected.
- (d) Failure to file a complaint report does not bar a civil or criminal action from being filed and maintained. If a person fails to file a report and is the only person claiming adverse effects from the particular use or application of a regulated herbicide, the department may, if in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter to the person alleged to have caused the adverse effects.

#### **75.016. Regulation of Equipment**

The department by rule may:

- (1) provide requirements for all equipment regardless of whether the equipment is required to be licensed; and
- (2) regulate or prohibit the use of equipment that may be hazardous in an area of the state.

#### **75.017. Rules**

- (a) As soon as practicable after receiving a written request for a revision of a rule, an exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area, the department may hold a public hearing to consider the request.
- (b) The department may not hold more than one hearing to consider the condition of a particular area during a 90-day period unless the department determines that more frequent hearings are necessary.
- (c) The department may distribute in printed form all rules of the department adopted under this chapter and may deliver a copy of those rules to each applicant for a permit or license.

#### **75.018. Enforcement**

- (a) The department shall enforce this chapter and rules adopted under this chapter.
- (b) If a county or district attorney refuses to act on behalf of the department in its enforcement of this chapter or a rule adopted under this chapter, the attorney general shall act on the department's behalf.

#### **75.019. Employees**

The department may employ inspectors and other employees necessary for the proper enforcement of this chapter and rules adopted under this chapter.

#### **75.020. County Herbicide Inspector**

- (a) The commissioners court of each county may appoint and compensate persons to be herbicide inspectors for the area designated by the appointment.
- (b) A county herbicide inspector shall cooperate with and work under the supervision of the department in enforcing this chapter and rules adopted under it.
- (c) A county herbicide inspector has the powers of an employee of the department.

#### **75.021. County Regulations**

- (a) If the commissioners court of a county determines that a crop or vegetation of value that is susceptible to being adversely affected by the application of a regulated herbicide exists in the county or a portion of the county and evidences its determination by an appropriate order entered in the minutes of the court, Sections 75.006-75.016 of this code become effective in that county or portion of the county on January 1 of the year following entry of the order.
- (b) If the commissioners court of a county determines that there is no longer a crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide in that county or portion of the county, the court may order that Sections 75.006-75.016 are no longer effective in the county or portion of the county. The commissioners court shall enter the order in the minutes of the court. The order takes effect on January 1 of the year following entry of the order.
- (c) The department shall adopt rules concerning the use of a regulated herbicide in a county in which a commissioners court has entered an order under Subsection (a) of this section.
- (d) On request by a commissioners court of a county in which Sections 75.006-75.016 of this code are in effect, and a determination by the department that an emergency exists, the department may suspend county regulations concerning the dates for application of regulated herbicides. Only an imminent threat to agricultural interests in a county that, if not immediately addressed, would create a significant economic loss to producers and ranchers in the county is an emergency for purposes of this subsection.
- (e) Before an order may be entered under this section, the commissioners court shall hold a hearing to determine whether the order should be issued. The hearing may be held only once each year and only in the month of October, November, or December. Before the 10th day before the day on which the hearing is to be held, the commissioners court shall give notice of the hearing in at least one newspaper in the county.
- (f) Before the 21st day after the day on which an order is entered, an interested person may appeal an order of a commissioners court issued under this section to district court to test the reasonableness of the commissioners court's fact-finding. On appeal, the district court shall follow the rules governing judicial review of contested cases under Subchapter G, Chapter 2001, Government Code, and shall apply the substantial evidence rule. Appeals may be taken from the district court as in other civil cases.
- (g) The commissioners court shall notify the department of a change in the status of the county or a portion of a county under this section.

#### **75.022. Penalties**

- (a) A person commits an offense if the person:
  - (1) applies a regulated herbicide without a permit in violation of Section 75.006 of this code;
  - (2) acts in violation of Section 75.004(a) of this code;
  - (3) has a permit to apply a powder or dry-type regulated herbicide and applies a herbicide that does not meet the requirements of Section 75.009 of this code;
  - (4) violates a rule adopted under Section 75.016 of this code;
  - (5) fails to keep or submit records in violation of Section 75.005 and 75.013 of this code; or
  - (6) violates or fails to comply with a rule adopted under this chapter.
- (b) An offense under this section is a Class A misdemeanor.
- (c) Section 12.020 of this code, which provides for the assessment of administrative penalties, applies to a person who violates this chapter or a rule or order adopted by the department under this chapter.
- (d) A penalty provided by this section does not affect the civil liability of a person convicted under this section.

# TEXAS HERBICIDE REGULATIONS

## CHAPTER 11. TEXAS HERBICIDE REGULATIONS

The provisions of this Chapter 11 issued under the Texas Agriculture Code, Sections 75.003, 75.005, 75.006, 75.012-75.018, 75.021, and 75.022.

### §11.1. Counties Regulated

The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75, unless specifically excepted by provisions of §11.2 of this title (relating to County Special Provisions): Aransas, Archer, Austin, Bailey, Bell, Bexar, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Dimmit, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Hudspeth, Hunt, Jackson, Jefferson, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Motley, Newton, Orange, Parmer, Rains, Refugio, Robertson, Rockwall, Runnels, San Patricio, Travis, Tyler, Waller, Ward, Wharton, Wilbarger, and Williamson.

### §11.2. County Special Provisions

- (a) **Aransas.** No permit is required for spraying regulated herbicides during the months of January and February.
- (b) **Archer.** The use of 2,4-D ester is prohibited for the period beginning May 1 and ending September 15th of each year.
- (c) **Austin.**
  - (1) Only that portion of Austin County lying east and south of the line beginning at the point where State Highway 36 crosses the north county line, thence southerly along Highway 36 to FM 949; thence westwardly along FM 949 to the San Bernard River is regulated by the Texas Agriculture Code (the Code), Chapter 75, as amended, and regulations adopted thereunder.
  - (2) Between March 15th and July 31st, in that portion of Austin County lying south of Interstate Highway 10, the following restrictions on the use of 2,4-D formulations shall apply:
    - (A) the application by aircraft is prohibited;
    - (B) the use of all ester formulations by any method is prohibited.
- (d) **Bailey.**
  - (1) For the period beginning on October 1 of one calendar year through May 1 of the following calendar year, no permit will be required for the use of the regulated herbicides in that part of Bailey County defined by the following landmarks: south of Highway 746 from Texas/New Mexico state line extending east to Highway 214; then south on Highway 214 to the intersection of Highway 214 and Highway 746; then proceeding east on Highway 746 to the Bailey/Lamb County Line.
  - (2) Aerial application of regulated herbicides is prohibited in the area described in this subsection during the regulated period.
  - (3) For the period beginning on October 1 of one calendar year through April 15 of the following calendar year, no permit will be required for the use of regulated herbicides in that part of Bailey County defined by the following landmarks: north of 746 from Texas/New Mexico state line extending east to Highway 214, then south on Highway 214 to the intersection of Highway 214 and Highway 746; then proceeding east on Highway 746 to the Bailey/Lamb County line.
  - (4) Except as provided in these subsections, the aerial application of regulated herbicides is prohibited except that the aerial application of dicamba is allowed in the area described in this subsection during the regulated period. The aerial application of regulated herbicides may be used during the regulated periods provided the user obtains a permit from the Texas Department of Agriculture (the department) prior to use.
- (e) **Brazoria.**
  - (1) For that portion of Brazoria County both north of State Highway 35 and west of Highway 288, the aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
  - (2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
  - (3) For that portion of Brazoria County not included in paragraph (1) of this subsection, the aerial application of regulated herbicides is prohibited between March 25th and August 1st of each year.
  - (4) The use of high volatile herbicides is prohibited.



- (5) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton Counties, for purposes of this subsection, are considered as one unit, and paragraphs (1) and (3) of this subsection are not to be changed without a public hearing for the unit as a whole.
- (f) **Brazos.** That portion of Brazos County lying east of the Brazos River and west of the following described line shall be regulated by the Code, Chapter 75, as amended, and regulations adopted thereunder. The eastern boundary of the regulated area is as follows:
- (1) beginning at the intersection of State Highway No. 6 and Old San Antonio Road (OSR), which point is on the north boundary line of Brazos County; thence in a southwesterly direction along OSR to its intersection with an unnamed gravel road approximately one mile north of FM 1687; thence easterly along FM 1687 to its intersection with a gravel road known as Stasny Road; thence southwesterly along Stasny Road to a 90 degree turn and continuing in a southeasterly direction to its intersection with State Highway 21 West; thence along Highway 21 in a westerly direction to its intersection with Jones Road; thence in a southeasterly direction along Jones Road to its intersection with FM 60; thence northeast along FM 60 to its intersection with the southwest property line of Easterwood Airport; thence southeast along the southwest line of Easterwood Airport to the most southerly corner of the airport property; thence in an easterly direction along the most direct line to the closest point on Dowling Road; thence northeast along Dowling Road to its intersection with an unnamed gravel road extending from Dowling Road to the town of Wellborn; thence southeast along said unnamed gravel road to its intersection with FM 2154 at the town of Wellborn; thence generally south and southeast along FM 2154 to its intersection with State Highway 6; thence southeast along State Highway 6 to its intersection with the Navasota River, which is the southern boundary of Brazos County;
  - (2) that portion of Brazos County lying east of the line described in paragraph (1) of this subsection shall be exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.
- (g) **Briscoe.**
- (1) The aerial application of regulated herbicides shall be prohibited from May 1 through September 1 of each year in that portion of Briscoe County that lies above the Caprock Escarpment, such area to be designated as Zone 1.
  - (2) The aerial application of regulated herbicides will be allowed in Zone 1 between September 2 and October 1 of each year with the requirement of a permit.
  - (3) The aerial application of regulated herbicides shall be prohibited from May 1 through October 1 of each year in that portion of Briscoe County that lies below the Caprock Escarpment, such area to be designated as Zone 2.
  - (4) Only 2,4-D amine and dicamba may be applied by ground applications with the requirement of a permit.
  - (5) No permit is required for the application of regulated herbicides from October 2 through April 30 of the following year.
- (h) **Burleson.**
- (1) The application of regulated herbicides by aircraft in Burleson County is prohibited. In no case shall regulated herbicides be used to treat any area that is nearer than two miles to any susceptible crops.
  - (2) Between April 1 and September 15 of each year, the following restrictions on the use of 2,4-D formulations shall apply.
    - (A) Only amine formulations may be used with a boom-type sprayer for ground applications in that area beginning at Milam County line; thence south along FM Road 1362 to FM Road 166; thence east to FM Road 2039; thence south to FM 60; thence west on FM 60 to Davidson Creek; thence south along Davidson Creek to Washington County line to Brazos River; thence north along Brazos County line to Milam County line, the place of the beginning.
    - (B) Cluster nozzles are prohibited in the area designated in subparagraph (A) of this subsection.
      - (i) Calhoun.
        - (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
        - (2) No permit is required for spraying regulated herbicides during the months of January and February of each year.
        - (3) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda and Wharton Counties, for purposes of this subsection, are considered as one unit and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(j) **Cochran.**

- (1) The use of 2,4-D ester is prohibited for the period beginning April 25 and ending October 15 of each year.
- (2) The aerial application of all regulated herbicides is prohibited for the period beginning April 25 and ending October 15 of each year.
- (3) A permit for application of all regulated herbicides is required for the period beginning January 1 and ending on December 31 of each year.

(k) **Collingsworth.**

- (1) The aerial application of regulated herbicides is allowed with the requirement of a permit between the dates of November 1 of one calendar year and April 15 of the following calendar year.
- (2) Ground and aerial applications of regulated herbicides will be allowed with the requirement of a permit throughout the year in the northeast part of the county, identified with physical boundaries north of the Salt Fork of the Red River and east of U.S. Highway 83.
- (3) Ground applications of 2,4-D amine will be allowed with the requirement for a permit throughout the county between the dates of April 16 and October 30 of each year.

(l) **Dawson.**

- (1) No permit is required for the application of the regulated herbicides during the period from October 1 to April 15 of the following year.
- (2) All ester formulations and/or other high volatile formulations of 2,4-D shall be prohibited.
- (3) A permit is required for the ground application of 2,4-D amine and dicamba during the regulated period from April 16 through September 30 of each year.
- (4) The aerial application of dicamba only is allowed with the requirement of a permit during the regulated period from April 16 through September 30 of each year.

(m) **Deaf Smith.** The use of all butyl ester formulations of 2,4-D and/or all high volatile formulations of 2,4-D is prohibited between April 15 and October 1 of each year.

(n) **Delta.** The aerial application of regulated herbicides is prohibited between April 15 and September 1 of each year.

(o) **Dickens.**

- (1) No permit is required for the application of regulated herbicides during the period beginning September 1 and ending May 15 of the following year.
- (2) The application of all regulated herbicides, with the exception of dicamba, is prohibited during the period beginning June 11 and ending August 31 of each year.
- (3) This subsection applies only to that portion of Dickens County that lies below the caprock escarpment.

(p) **Dimmit.**

- (1) Only that portion of Dimmit County within the area beginning at the intersection of the center line of U.S. Highway 83 and the Dimmit-Zavala County line; thence in a southerly direction following the center line of U.S. Highway 83, through Carrizo Springs, and Asherton, to its intersection with FM Road 190 East; thence in a northeasterly direction following the center line of FM Road 190 to its intersection with State Highway 85; thence in an easterly direction following the center line of State Highway 85 to its intersection with FM Road 65; thence following the center line of FM Road 65 to its intersection with the Dimmit-Zavala County line; thence in a westerly direction following the Dimmit-Zavala County line to the place of beginning is regulated by the Code, Chapter 75, as amended, and regulations adopted thereunder.
- (2) Aerial application of regulated herbicides in the regulated portion of Dimmit County is prohibited.

(q) **Foard.** That portion of Foard County within the area described as follows is regulated by the provisions of the Code, Chapter 75, as amended, and regulations adopted thereunder, for the period beginning May 25 and ending October 10 of each year: all of that portion of Foard County lying east of a line which has its origin beginning at a point where the Pease River intersects the east boundary line of Section 509, Block A, H.&T.C.R.R.C., survey, thence continuing southerly along the adjoining section lines ending at a point of intersection with the 345 KV transmission electric power lines, then, all of the portion of Foard County lying north of a line along the 345 KV transmission electric power lines extending easterly to the Wilbarger County line.

(r) **Fort Bend.**

- (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.

- (2) The application of high volatile herbicides is prohibited.
  - (3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
  - (4) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton Counties, for purposes of this subsection, are considered one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.
- (s) **Gaines.**
- (1) The application of all regulated herbicides is allowed without the requirement of a permit between the dates of October 1 and March 31 of the following year.
  - (2) A permit is required for the application of the regulated herbicides between the dates of April 1 to September 30 of each year.
- (t) **Hall.** The application of regulated herbicides is prohibited between May 15 and October 15 of each year.
- (u) **Harris.**
- (1) The use of high volatile herbicides is prohibited.
  - (2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (v) **Haskell.**
- (1) No permit is required between November 1 and May 20 of the following calendar year.
  - (2) Aerial application of regulated herbicides is prohibited between June 2 and November 1 of each year.
- (w) **Hidalgo.** The regulated portion of Hidalgo County is as follows:
- (1) beginning at north county line and U.S. 281; thence south to FM 495; thence west to State Highway 107 (Conway Drive); thence south to U.S. 83 Expressway; thence west along U.S. 83 to west county line;
  - (2) all other lands in Hidalgo County are exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.
- (x) **Houston.** That portion of Houston County within the area described below is regulated by the provisions of the Code, Chapter 75, as amended, and regulations adopted thereunder:
- (1) beginning at a point where Bédias Creek enters Trinity River; thence north with meanders of the river to the point where Highway Number 7 crosses Trinity River; thence east with Highway Number 7 to city limits of Crockett; thence south to Farm Road Number 2110; thence to Pearson Chapel on Farm Road Number 2110; thence on Farm Road Number 3151 south to intersection of Farm Road Number 230, thence southwest on Farm Road Number 230 to Prison Farm entrance; thence south to Walker County line; thence with Walker and Houston County line to Trinity River and the place of beginning;
  - (2) all other lands in Houston County are exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.
- (y) **Hudspeth.**
- (1) The use of all ester formulations of regulated herbicides is prohibited between the dates of April 1 and October 15 of each year.
  - (2) A permit is required for the application of the other formulations of regulated herbicides between the dates of April 1 and October 15 of each year.
  - (3) A permit is not required for the application of the regulated herbicides between the dates of October 16 to March 31 of the following year.
- (z) **Hunt.**
- (1) The aerial application of regulated herbicides shall be prohibited from April 15 through September 1 of each year.
  - (2) No permit is required for the application of regulated herbicides from September 1 of one calendar year through April 15 of the following calendar year.
- (aa) **Jackson.**
- (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
  - (2) No permit is required for the application of regulated herbicides during the months of January and February of each year.

- (3) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton Counties, for purposes of this subsection, are considered one unit and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(bb) **King.** Aerial application of regulated herbicides is prohibited between June 10 and October 15 of each year.

(cc) **Knox.** That portion of the county lying north of the Brazos River to its intersection with longitude 99 degrees 35'; thence north to latitude 33 degrees 42' going west to State Highway 6, then north to the Foard County line, west to King County line; thence south to the Brazos River, is exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder. All other portions of Knox County are required to comply with provisions of the Code, Chapter 75, and regulations adopted thereunder, except that during the period between October 1 through March 31 of the following calendar year no permit will be required.

(dd) **Lamar.**

- (1) That portion of Lamar County beginning at the Red River County line on State Highway 271N, which point is the east boundary line of Lamar County; thence on a northwesterly direction along 271 North to the town of Pattonville; thence in a westerly direction from Pattonville along Jefferson Road for a distance of two miles; thence south on unnamed oil top county road 0.9 mile to community of Shady Grove; thence in a westerly direction on unnamed oil top county road for one mile to the intersection of FM 905; thence south one mile on FM 905 to first unnamed oil top county road in community of Plainview; thence in a westerly direction on county road four miles to the town of Biardstown to intersection of FM 1497; thence northwesterly on FM 1497 0.3 mile to Hickory Creek; thence southeasterly on Hickory Creek to North Sulphur River, which is the south boundary line of Lamar County; thence easterly along the south county line to the southeast corner of the county; thence northerly along the east county line to its intersection with Highway 271 North, to the point of beginning is regulated by the Code, Chapter 75, as amended, and regulations adopted thereunder.

- (2) Aerial application of regulated herbicides is prohibited in the regulated portion of Lamar County between April 15 and September 1 each year.

(ee) **Lamb.** During the period between September 15 of one calendar year through April 1 of the following year, no permit will be required for the following regulated herbicides:

- (1) 2-methyl-4 chlorophenoxyacetic acid (MCPA);  
(2) polychlorinated benzoic acids; and  
(3) either alone or in mixtures any of the herbicides listed in paragraph (1) and (2) of this subsection.

(ff) **Liberty.**

- (1) The application of high volatile herbicides is prohibited.
- (2) That portion of Liberty County lying south of Luce Bayou from the Harris County line to Highway 321, then the area south of a line from the point where Luce Bayou crosses Highway 321 due east to the Trinity River, then the area east of the Trinity River from this point north to the San Jacinto County line is exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder. All other portions of Liberty County are required to comply with provisions of the Code, Chapter 75, as amended, and regulations adopted thereunder.

(gg) **Matagorda.**

- (1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.
- (2) The application of high volatile herbicides is prohibited.
- (3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (4) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton Counties, for purposes of this subsection, are considered as one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(hh) **Motley.** No permit is required for the period of November 1 to May 14 of the following year.

(ii) **Parmer.** No permit is required in Parmer County for applications of regulated herbicides between November 1 and March 31 of the following year. However, the application of all ester formulations of 2,4-D is prohibited between the dates of April 15 and October 1 of each year.

(jj) **Refugio.**

- (1) The application of the ester formulations of 2,4-D by any means is prohibited between the period of March 1 and September 15 of each year. The aerial application of any formulation of 2,4-D is prohibited between



March 10 and September 15 of each year; except that if the county commissioners court determines that no cotton is growing on that date, in said county, permits may be issued until such time the county commissioners court determines that cotton is growing.

- (2) No permit is required for the application of regulated herbicides during the months of January and February of each year.

(kk) **Robertson.**

- (1) Persons in that portion of Robertson County, east of State Highway 6, are exempted from requirements of the Code, Chapter 75, as amended, and regulations adopted thereunder.
- (2) A permit is required for the application of regulated herbicides in that portion of Robertson County, west of State Highway 6 between the dates of April 1 and September 15 each year.

- (ll) **Runnels.** That portion of Runnels County beginning on the west county line at the point of intersection with the Colorado River, east-southeasterly along the Colorado River to its intersection with U.S. Highway 83, thence north along U.S. Highway 83 to its intersection with the north county line, thence westerly along the north Runnels County line to the northwest corner of the county, thence southerly along the west county line to the Colorado River, the point of beginning, is regulated by the Code, Chapter 75, and regulations adopted thereunder. In regulated areas, no permit is required from October 1 through May 25 of the following year. The application of ester formulations of regulated herbicides is prohibited from May 26 through September 30 of each year. The application of other regulated herbicides will be allowed beginning May 26 through September 30 of each year provided that a spray permit is obtained prior to each application.

- (mm) **San Patricio.** No permit is required during the period beginning September 1 and ending March 1 of the following year. Application of regulated herbicides during the period of March 2 through August 31 must be in compliance with the Code, Chapter 75, as amended, and regulations adopted thereunder. Only boom-type equipment can be used, for ground applications with nozzle height not to exceed 24 inches and maximum pressure not to exceed 20 pounds per square inch. The use of 2,4-D amine herbicides must meet the following requirements for both ground and aerial applications.

**Wind Velocity**

0-5 m.p.h.  
6-10 m.p.h.

**Downwind**

Within 16 rows  
1/8 mile

**Upwind**

8 rows  
8 rows

(nn) **Wharton.**

- (1) The aerial application of all formulations of 2,4-D is prohibited in that portion of Wharton County east of the Colorado River between March 10 and September 15 of each year.
- (2) The application of all formulations of 2,4-D by any method is prohibited during the period beginning March 10 and ending October 1 of each year, in that portion of Wharton County lying west of the Colorado River.
- (3) The use of high volatile herbicides is prohibited.
- (4) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.
- (5) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton Counties, for purposes of this subsection, are considered as one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(oo) **Wilbarger**

- (1) No permit is required for the application of regulated herbicides during the period of September 16 to May 9 of the following calendar year.
- (2) The application of the following regulated herbicides is prohibited during the regulated period beginning May 10 and ending September 15 of each year:
  - (A) 2,4,5-Trichlorophenoxyacetic Acid (2,4,5-T);
  - (B) Ester formulations of 2,4-Dichlorophenoxyacetic Acid (2,4-D);
  - (C) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA);
- (3) The aerial application of polychlorinated benzoic acids and 2,4-D amine is prohibited during the regulated period except during the period of May 10 and ending May 20 of each year. Ground applications of polychlorinated benzoic acids and 2,4-D Amine may be made during the regulated period with the requirement of a permit.

- (4) Research conducted by the Texas A&M University System under the auspices of brush and weed control, using all regulated herbicides, will be allowed during the regulated period. Aerial applications must provide a buffer zone of at least five statute miles from any susceptible crops, and wind velocity must not exceed 10 mph during application. Research will be allowed during the period beginning May 15 and ending September 15 of each year. The department shall be notified before the commencement of such research projects.

### §11.3. Regulated Herbicides

- (a) Because of their potential to cause adverse effects to nontargeted vegetation, all herbicide products containing the following active ingredients, alone or in mixtures, shall be classified as regulated herbicides when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively:
- (1) 2,4-dichlorophenoxyacetic acid (2,4-D);
  - (2) 2,4,5-trichlorophenoxyacetic acid (2,4,5-T);
  - (3) 2-methyl-4-chlorophenoxyacetic acid (MCPA);
  - (4) 3,6-dichloro-o-anisic acid (dicamba).
- (b) Formulations containing the active ingredients listed in subsection (a) of this section are exempt from being classified as regulated herbicides if they meet one of the following criteria:
- (1) specialty fertilizer mixtures packaged in containers of 50 pounds or less that are labeled for ornamental use and registered in the Code, Chapter 63, concerning Commercial Fertilizer; or
  - (2) products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.

### §11.4. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Applicator**—An applier of regulated herbicides; any person applying regulated herbicides in this state by aircraft, ground, or hand-spraying equipment who has been licensed or certified in accordance with the Texas Agriculture Code, Chapter 76, and regulations adopted thereunder.

**Code**—The Texas Agriculture Code.

**Commercial applicator**—An applicator of regulated herbicides licensed in accordance with the requirements of the Texas Agriculture Code, §76.108, and §7.12 of this title (relating to Commercial Applicator License).

**Commissioner**—The commissioner of agriculture of the State of Texas, or his designee.

**Dealer**—Any person who sells, wholesales, distributes, offers, or exposes for sale, exchanges, barter, or gives away within or into this state any regulated herbicides.

**Department**—Texas Department of Agriculture.

**Equipment**—Any type of ground, aquatic, or aerial equipment or device employing motorized, mechanical, or pressurized power and used to apply a regulated herbicide to land or to anything that may be inhabiting or growing on the land. The term does not include a pressurized hand-sized apparatus used to apply a regulated herbicide or any equipment or device for which the person applying the regulated herbicide is the source of power or energy used in making the application.

**Formulation**—The mixture of active and inert ingredients for practical use as a pesticide, such as wettable powder, granular and emulsifiable concentrate.

**Person**—Any individual, firm, partnership, association, corporation, company, joint stock association, or body politic, or any organized group of persons whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.

**Pesticide**—A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, including, but not limited to, fungicides, herbicides, insecticides, nematocides, rodenticides, desiccants, defoliant, or plant growth regulators.

**Volatility**—The tendency of a substance to change from a liquid or solid to a gaseous state. It is the movement of a pesticide in a gaseous state in the air from surface water, soil, or vegetation. For example, the volatility of different types of regulated herbicides under comparable environmental conditions is as follows.

- (A) Sodium and ammonium salts. These are generally not considered as volatile.
- (B) Amine salts. These are generally not considered as volatile. The alkylamines include monomethylamine, dimethylamine, isopropylamine, triethylamine, and others. The alkylnolamines include diethanolamine, triethanolamine, and mixed isopropanolamines.
- (C) Low-volatility esters. These contain esters that suppress volatility. Formulations include butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl, and isooctyl ester. These contain various pounds of acid equivalent per gallon.
- (D) Highly volatile esters. These include methyl, ethyl, butyl, isopropyl, octylamyl, and pentyl esters containing various concentrations expressed in pounds of acid equivalent per gallon.

*Weed*—Any plant growing where not wanted.

### **§11.5. Dealers**

- (a) Requirements. Distribution by retailers, distributors, wholesalers, warehouse agents, and manufacturers of regulated herbicides require the dealer to hold a valid dealer's license before any distribution is made.
- (b) Multiple business locations. In the event a person operates a business at more than one location in the state of Texas under the same firm name, a separate dealer's license shall be required for each location.
- (c) License. Any dealer distributing regulated herbicides in this state, or out-of-state dealers distributing regulated herbicides in this state, must have a dealer's license and record all distributions, regardless of whether or not the regulated herbicides distributed are to be used in a regulated or unregulated county.
- (d) Fees for a dealer's license. All dealers, as defined in §11.4 of this title (relating to Definitions), shall pay a fee of \$100 upon submitting an application for a dealer's license.
- (e) Checks. All checks for license fees required by these regulations shall be made payable to the Texas Department of Agriculture.
- (f) Expiration of dealer's license. All dealer licenses issued in accordance with these regulations shall expire on December 31 of each year.
- (g) Distribution records. All dealers are required to make and retain for a period of two years from the date of distribution a record of each distribution of regulated herbicides. Such records of each distribution shall consist of the following information:
  - (1) the name, address, licensed or certified applicator number, or dealer license number of the person to whom the regulated herbicide was distributed;
  - (2) the date of distribution;
  - (3) the brand name and Environmental Protection Agency registration number;
  - (4) the quantity of regulated herbicide distributed; and
  - (5) if the distribution is made to a nonlicensed person acting under the authorization of a certified or licensed applicator, the dealer must record the name and address of the nonlicensed person to whom the regulated herbicide is made available.
- (h) Distribution record to the department. Upon written request by the department, a licensed dealer shall submit records of distribution of regulated herbicides, except that out-of-state dealers that do not have a location in the state will be required to submit distribution records to the department not later than the 10th day of each month a record of all regulated herbicides distributed during the prior month. Forms for submitting such distribution records listing the required information shall be furnished by the department.

### **§11.6. General Requirements for Applicators**

The following requirements are applicable to all persons applying regulated herbicides.

- (1) Spray permits. No person shall apply regulated herbicides as defined in §11.3 of this title (relating to Regulated Herbicides), without first obtaining a permit for such application. A blanket permit may be issued to a licensed or certified applicator. The department may require a licensed or certified applicator who has obtained a blanket permit to submit a supplemental report of any regulated herbicide applied under the terms of the permit.
  - (A) Expiration of permits. All permits expire when the acreage for which the permit was granted has been sprayed, or 180 days after issuance, whichever occurs first.
  - (B) Exempt methods of application. Applications of regulated herbicides by brush, mop, wick, basal treatment, or injection method are hereby exempt from the requirements of obtaining a permit.

- (C) High volatile herbicides. Spraying high volatile herbicides is prohibited when there are susceptible crops within a four-mile radius from every point of the land to be sprayed.
- (2) Commercial applicators.
  - (A) It shall be the joint responsibility of the person in control of the crop and, if applicable, the commercial applicator to insure that the application of regulated herbicides is made in compliance with the rules and regulations issued by the department.
  - (B) All persons engaged in the application of regulated herbicides for hire must be licensed by the department under §7.12 of this title (relating to Commercial Applicator License) and meet the requirements of financial responsibility under §7.13 of this title (relating to Commercial Applicator Proof of Financial Responsibility) or of the Structural Pest Control Board as provided by the Structural Pest Control Act, Texas Civil Statutes, Article 135b-6.
  - (C) Applications by an applicator licensed by the Texas Structural Pest Control Board in turf and weed control and a nurseryman licensed by the department in turf weed control for structural pest control applications are exempt from the permit requirements of this section.
- (3) Persons other than commercial applicators. All persons applying regulated herbicides to lawns are exempt from the permit requirements of this section.
- (4) Records. The applicator shall keep the following records for a period of two years:
  - (A) the date and time of day each application started;
  - (B) the name of the person for whom the application was made (owner or lessee);
  - (C) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties;
  - (D) the regulated herbicide applied, including:
    - (i) product name;
    - (ii) its Environmental Protection Agency registration number;
    - (iii) rate of product per unit; and
    - (iv) total volume of spray mix, dust, granules, or other materials applied per unit;
  - (E) the name of the pest for which it was used;
  - (F) the site treated (for example: name of crop, etc.);
  - (G) total acres or volume of area treated;
  - (H) wind direction, velocity, and air temperature;
  - (I) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, or decal number affixed to the application unit; and
  - (J) the name and department license number of the applicator.

#### **§11.7. Registration and Specification of Equipment**

- (a) Requirements for spray operations. All spraying of regulated herbicides must conform to these requirements in a regulated county regardless of whether or not a permit is required.
  - (1) Maximum pressure for aerial equipment. It is unlawful for a person to spray regulated herbicides with aerial application equipment at an outlet pressure which exceeds 30 pounds per square inch.
  - (2) Maximum pressure for ground equipment. It is unlawful for a person to spray regulated herbicides with ground equipment when the equipment outlet pressure exceeds 40 pounds.
- (b) Maximum velocity. No person shall spray regulated herbicides when the wind velocity exceeds 10 miles per hour or as specified on the product label, if the label is more restrictive.
- (c) The application of regulated herbicides in dust form is prohibited unless:
  - (1) all particles of the herbicide can pass through a United States standard 10-mesh sieve; and
  - (2) not more than 1.0% of the particles can pass through a United States standard 60-mesh sieve.
- (d) Equipment used by persons other than commercial applicators may be inspected, but proof of financial responsibility is not required for the equipment or the person.
- (e) The use of any turbine or blower-type ground application equipment to apply regulated herbicides is prohibited.



### **§11.8. Complaint Investigation**

- (a) Any person with cause to believe that any provision of this chapter has been violated may file a written complaint with the department. The department will continue to accept either written or oral notification of a complaint, but may require that a complaint form be signed in order to conduct an investigation.
- (b) Any person who has experienced or is alleging adverse effects from a regulated herbicide application may file a written complaint with the department. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.
- (c) The department will investigate the complaint and make a full written report.
  - (1) A preliminary report may be given to the parties directly involved in the incident. In cases where no apparent adverse effects can be documented, the department will give the information to the complaining party and cease the investigation.
  - (2) The final report will be made after all aspects of the case have been determined to the satisfaction of the department. This report will be made available to the parties concerned upon written request. The final report will prevail over the preliminary report if a conflict should arise.
- (d) The department shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.
- (e) The department will not estimate monetary losses sustained.
- (f) No finding of violation by the department will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant. For each such complaint, the department will determine the extent of investigation which is appropriate to address the complaint.

### **§11.9. Requirements for Special County Provisions**

- (a) The department shall not accept for adoption any request for special county provisions which will, except as provided by and consistent with the Code, Chapter 75, as amended, and regulations adopted thereunder, either directly or indirectly:
  - (1) exempt applicators from obtaining spray permits, except during periods when susceptible vegetation is at a minimum;
  - (2) exempt applicators from recordkeeping requirements;
  - (3) exempt commercial applicators from requirements for proof of financial responsibility;
  - (4) prohibit the distribution of any herbicide; and/or
  - (5) require the department to inspect land prior to issuance of spray permits.
- (b) The department may consider for adoption a request by a county to:
  - (1) regulate or prohibit methods of application;
  - (2) prohibit application of any regulated herbicide during any period of the year; and/or
  - (3) exempt from the provisions of the Code, §§75.006-75.016, as amended, any portion of a county which can be identified by easily recognizable physical boundaries.

### **§11.10. Penalties**

Any person who commits an offense under the Code, §75.022, or rules adopted thereunder, shall be guilty of a Class A misdemeanor. In addition, the Code, §12.020, which provides for the assessment of administrative penalties, applies to a person who violates Chapter 75 or these regulations.

### **§11.11. Expiration Provision**

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

# TEXAS RIGHT-TO-KNOW LAW

## CHAPTER 125. AGRICULTURAL HAZARD COMMUNICATION ACT

### 125.001 Declaration of Purpose

The legislature finds that the health and safety of persons living and working in agricultural areas in the state may be improved by providing access to information regarding certain hazardous chemicals to which they may be exposed either during their normal employment activities, during emergency situations, or as a result of proximity to the use of those chemicals. The legislature also finds that, because of the conditions of agricultural employment, there is a unique situation regarding certain agricultural laborers that makes it necessary to establish formal procedures to provide access to information regarding certain hazardous chemicals and to assure those laborers that there will be no retaliation by the employer for the exercise of rights under this chapter. This chapter is intended to assure that accessibility to information regarding chemicals covered by this chapter be provided to agricultural laborers who may be exposed to those chemicals in agricultural workplaces, to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations when those chemicals are in close proximity to residential areas, and to the department to make the information available to the general public through specific procedures.

### 125.002. Definitions

In this chapter:

- (1) *Agricultural laborer* means a person who plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state as determined by rule of the department, and includes an agricultural laborer who handles a chemical covered by this chapter. Office workers, cooks, maintenance workers, security personnel, and nonresident management are not agricultural laborers, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to chemicals covered under this chapter. Farm and ranch laborers working solely with livestock and persons working solely in the retail sales component of a business are not agricultural laborers for purposes of this chapter.
- (2) *Chemical name* means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.
- (3) *Common name* means any designation of identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.
- (4) *Chemical manufacturer* means an employer in Standard Industrial Classification (SIC) Codes 20 through 39.
- (5) *Designated representative* means the individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under this chapter. A designated representative is not required to reveal the name of the agricultural laborer he represents if the department has reviewed the laborer's written authorization, certifies that the representative has that authorization, and determines that the agricultural laborer would be entitled to the information the designated representative is seeking to obtain. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written authorization from a laborer.
- (6) *Distributor* means any business, other than a chemical manufacturer or importer, that supplies chemicals covered by this chapter to other distributors or to purchasers.
- (7) *Expose or exposure* means that an agricultural laborer is subjected to a chemical covered by this chapter in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption, and includes potential, possible, or accidental exposure.
- (8) *Fire chief* means the elected or paid administrative head of a fire department as defined in Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).
- (9) *Label* means any written, printed, or graphic material displayed on or affixed to containers of chemicals covered by this chapter.
- (10) *Material safety data sheet (MSDS)* means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document or, in the case of a chemical labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) for which an MSDS is both

unavailable and not required under the federal OSHA's hazard communication standard, a product label or other equivalent document with precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements.

- (11) *Work area* means a room, defined space, or field where chemicals covered by this chapter are stored or used and where agricultural laborers may be present.
- (12) *Workplace* means a geographical location containing one or more work areas.

### **125.003. Application**

- (a) This chapter applies only to the following employers who annually use or store any one of the chemicals covered by this chapter in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:
  - (1) employers who themselves or through labor agents hire agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; and
  - (2) employers who themselves or through labor agents hire agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.
- (b) This chapter applies only to the following chemicals:
  - (1) chemicals labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); and
  - (2) fertilizers with chemicals that are listed or defined as hazardous chemicals in 29 CFR Section 1910.1200(c) or 1910.1200 (d)(3), including those listed or defined in subsequent comparable regulations.

### **125.004. Workplace Chemical List**

- (a) An employer covered by this chapter shall compile and maintain a workplace chemical list on a form prescribed by the department that contains the following information by crop for each chemical covered by this chapter that is actually used or stored annually in the workplace in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:
  - (1) the product name used on the MSDS and container label and the Environmental Protection Agency registration number, if applicable;
  - (2) the date and crop on which the chemical was applied or used; and
  - (3) the work area in which the chemical is actually stored or used.
- (b) The employer shall update the workplace chemical list as necessary but not less frequently than annually.
- (c) The workplace chemical list may be prepared for the workplace as a whole or for each work area and must be readily available to agricultural laborers and their designated representatives. New or newly assigned agricultural laborers shall be made aware of workplace chemical list before working with chemicals covered by this chapter or in a work area containing those chemicals.

### **125.005. Workplace Chemical List Form, Maintenance, and Access**

- (a) The department shall prescribe forms for workplace chemical lists required by this chapter with places to indicate the crop, the product name of the chemical that is applied to the crop or that is stored, and the location and the date of its application, use, or storage, as appropriate.
- (b) An employer covered by this chapter shall maintain one form for each crop, work area, or workplace as a whole, as appropriate, and shall add information to the form as different chemicals are applied, used, or stored.
- (c) The employer shall attach relevant information to the form, including MSDSs.
- (d) The employer shall keep the forms and attachments accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.
- (e) The employer shall keep the forms and attachments under this chapter for 30 years. However, the department shall provide by rule that an employer may file with the department annually the forms and attachments, including an estimate of the total amount of each chemical listed on the form that was used. The department shall categorize and cross-reference the data on the forms in a manner to preserve the data for future medical use. An employer who files the forms and attachments with the department under rules adopted under this section is not required to preserve the forms.

- (f) If it is determined after a hearing conducted under Section 12.032 that an employer has repeatedly failed to maintain the forms and attachments as required, the department may require the employer to file the documents with the department. In addition, the person may be subject to any applicable penalties provided by this chapter.
- (g) If agricultural activities for which forms and attachments are maintained cease at a workplace, the forms and attachments shall be filed with the department, and the department shall retain the information for 30 years. If an employer covered by this chapter is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as provided by Subsection (e) of this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of forms and attachments.
- (h) Except as otherwise provided by this section, the employer shall show the forms and attachments, on request, to an employee, designated representative, treating medical personnel, or a member of the community. The designated representative or treating medical personnel are not required to identify the employee represented or treated. If the employer has filed the forms and attachments with the department, the employer shall inform the requestor of that fact.
- (i) If a designated representative or member of the community desires a copy of a form and attachments and the employer refuses to provide a copy, that person shall notify the department of the request and the employer's refusal. Within two working days, the department shall request that the employer provide the department with all pertinent copies. The employer shall provide copies of the form and attachments to the department within 24 hours after the department's request if a designated representative desires the copies, and within 14 days after the department's request if a member of the community desires the copies.
- (j) The employer may not refuse to provide the forms and attachments to an employer or treating medical personnel.

#### **125.006. Material Safety Data Sheets**

- (a) Chemical manufacturers and distributors shall provide appropriate MSDSs to purchasers in this state of chemicals covered by this chapter.
- (b) Employers covered by this chapter shall maintain the most current MSDS received from manufacturers or distributors for each purchased chemical covered by this chapter. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner. This chapter does not require an employer who is not a chemical manufacturer to create an MSDS.
- (c) The department may require any person who has or obtains a registration for a pesticide under Sections 76.041-76.048 of this code to provide with the registration a copy of the most current and complete MSDS for that pesticide.
- (d) The department by rule may require chemical manufacturers to submit MSDSs for chemicals covered by this chapter, excluding chemicals covered by Subsection (c) of this section.
- (e) All MSDSs in the files of the department are public records.

#### **125.007. Labels**

- (a) Existing labels on incoming containers of chemicals covered by this chapter may not be removed or defaced.
- (b) Agricultural laborers may not be required to work with a chemical covered by this chapter from an unlabeled container except for a portable container intended for the immediate use of the laborer who performs the transfer.

#### **125.008. Emergency Information**

- (a) Employers covered by this chapter and other entities who normally store products labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 1306 et seq.) in an amount in excess of 55 gallons or 500 pounds or an amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter within one-quarter mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the names and telephone numbers of knowledgeable representatives of the employer or other entity storing the product who can be contacted for further information or contacted in case of emergency.



- (b) Each employer, on request, shall provide a copy of the workplace chemical list to the fire chief having jurisdiction over the storage place. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.
- (c) The fire chief having jurisdiction over the storage place or his representative, on request, shall be permitted to conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of preparing fire department activities in case of an emergency.
- (d) Employers shall provide to the fire chief having jurisdiction over the storage place, on request, a copy of the MSDS for any chemical on the workplace chemical list.
- (e) On request, the fire chief having jurisdiction over the storage place shall make the workplace chemical list and MSDSs available to members of the fire department having jurisdiction over the workplace and to other personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the employer.

#### **125.009. Training Program Provided by Department**

- (a) The department in conjunction with the Texas Agricultural Extension Service shall develop an on-going training program for agricultural laborers. The program must provide information the department considers appropriate and must include:
  - (1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;
  - (2) information on the proper storage, acute and chronic effects, and safe handling of chemicals covered by this chapter;
  - (3) information on protective clothing and equipment and first aid treatment to be used with respect to the chemicals covered by this chapter; and
  - (4) general safety instructions on the handling, cleanup procedures, and disposal of chemicals covered by this chapter.
- (b) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department by rule may determine to provide the training program in additional counties with a significant farm labor work force or based on other relevant factors. In all other counties, the county office of the Texas Agricultural Extension Service shall provide the training program.
- (c) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall notify agricultural laborers on a regular basis of the training program by public service announcements given by the media and shall contact in writing charitable, public, religious, and health care provider organizations to announce the training program to agricultural laborers in the county served by the organization.
- (d) In addition to the Texas Agricultural Extension Service, the department may develop the training program in conjunction with the Texas Department of Health, other appropriate state agencies, clinics, hospitals, and other health care providers in counties in which the training program will be conducted, and organizations representing employers, organizations representing employees, and organizations representing manufacturers of chemicals covered by this chapter.
- (e) The department shall prepare and make available to employers appropriate training materials for employers covered by this chapter and their managers and labor contractors.
- (f) To help cover production costs, the department may charge not more than \$10 plus the cost of a blank videotape from a person desiring to purchase the videotaped training program.
- (g) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall provide to each agricultural laborer who completes the training program a card evidencing participation in the program. An employer may not refuse to hire an agricultural laborer solely because the laborer does not have a card issued under this subsection. An employer who refuses to hire an agricultural laborer for that reason is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

#### **125.010. Crop Sheet Developed by Department**

- (a) The department shall develop crop sheets that contain the following information:
  - (1) the kinds of chemicals typically used on a particular crop;
  - (2) the typical time a chemical is applied to a particular crop;
  - (3) general safety information, including information on general hygiene, clothing, contact with chemicals, medical symptoms, pregnancy, and other relevant safety data;

- (4) a notice of the training programs and the counties in which the programs will be conducted;
  - (5) the availability of MSDSs for chemicals used on a particular crop;
  - (6) the means of locating emergency medical information;
  - (7) agricultural laborers' rights under this chapter;
  - (8) the name and telephone number of the person to contact for information under this chapter;
  - (9) the appropriate telephone number for emergency information; and
  - (10) any other safety or health-related information the department considers relevant.
- (b) The information on the crop sheet must be printed in English and Spanish, except that the information required by Subsections (a)(1) and (a)(2) of this section is required to be printed only in English. The department may provide crop sheets printed in other languages commonly used by agricultural laborers who work with a particular crop.
  - (c) The department shall develop the crop sheets in conjunction with the Texas Department of Health, the Texas Agricultural Extension Service, other appropriate state agencies, and clinics, hospitals, and other health care providers in counties in which training programs are provided by the department under Section 125.009 of this code.
  - (d) Annually, the department shall:
    - (1) provide appropriate crop sheets to clinics, hospitals, and other health care providers that serve agricultural laborers and that are located in counties in which the training program is provided; and
    - (2) provide to an employer covered by this chapter one crop sheet for each crop grown by that employer.
  - (e) The director of the Texas Feed and Fertilizer Control Service under Section 63.003 of this code shall provide to the department the information that is needed by the department under Subsection (a) of this section for the fertilizers that are covered by this chapter.
  - (f) For purposes of developing crop sheets under this chapter and complying with other provisions of this chapter, nursery stock, stored grain, and other logical groupings may be considered a single crop as determined by rules adopted by the department.

#### **125.011. Crop Sheet Provided by Employer**

- (a) An employer covered by this chapter shall provide crop sheets to each agricultural laborer pertaining to the crops that laborer will be working with if:
  - (1) the laborer does not have a card issued under Section 125.009(g) of this code; or
  - (2) the laborer requests the crop sheets.
- (b) An employer who is required under Subsection (a) of this section to provide crop sheets to an agricultural laborer shall ensure that the information on a crop sheet required by Sections 125.010(a)(3), (a)(4), and (a)(10) of this code that pertains to the crops with which the laborer will be working is read to the laborer at least once each work season. When the crop sheet is read, the employer or the employer's agent shall inform the laborer of the date on which chemicals covered by this chapter were last applied or are scheduled to be applied to the field or to other areas in which the laborer will be working and shall inform the laborer of the time on which the reentry period if any, expired for chemicals covered by this chapter that have been applied.
- (c) If an employer is required under Subsection (b) of this section to read a crop sheet to an agricultural laborer, the employer or a person designated by the employer shall read the appropriate crop sheets on the first day of each work season or on the day the laborer begins employment with that employer, whichever is later.
- (d) In addition to the crop sheet, the department shall require an employer to offer to the agricultural laborer, on the day on which the laborer is given his first pay for that work season, basic safety and health-related information approved by the department. That information shall be available to the employers free of charge.
- (e) An employer who does not provide or read the crop sheets as required by this section is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

#### **125.012. Protective Clothing**

An employer covered by this chapter shall provide any protective clothing or device that is recommended by the MSDS, crop sheet, or department rule and that is in addition to the standard long-sleeved shirt, long pants, boots or shoes, and socks normally provided by the agricultural laborer.

#### **125.013. Rights of Agricultural Laborers**

- (a) Agricultural laborers employed by employers covered by this chapter who may be exposed to chemicals covered by this chapter shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for those chemicals. Laborers, on request, shall be provided a copy of a specific MSDS. In addition, laborers shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided with appropriate personal protective equipment as required by this chapter. These rights are guaranteed on January 1, 1988.
- (b) An employer covered by this chapter may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted an inspector of the department who may make or is making an inspection under Section 125.016 of this code, instituted or caused to be instituted any proceeding under or related to this chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under this chapter on behalf of the laborer or on behalf of others. Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.
- (c) Any waiver by an agricultural laborer of the benefits or requirements of this chapter is against public policy and is void. Any employer's request or requirement that a laborer waive any rights under this chapter as a condition of employment is a violation of this chapter.

#### **125.014. Department Rules; Outreach Program**

- (a) The department may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.
- (b) The department shall develop and provide to each employer covered by this chapter a suitable form of notice providing agricultural laborers with information regarding their rights under this chapter.
- (c) As part of an outreach program, the department shall develop and distribute a supply of informational leaflets on employers' duties, agricultural laborers' rights, the public's ability to obtain information under this chapter, the outreach program, and the effects of chemicals covered by this chapter.
- (d) The department may contract with a public institution of higher education or other public or private organizations to develop and implement the outreach program.
- (e) The department shall publicize the availability of information to answer inquiries from agricultural laborers, employers, or the public in this state concerning the effects of chemicals covered by this chapter.
- (f) In cooperation with the department, an employer covered by this chapter may provide an outreach program in the community.

#### **125.015. Liability Under Other Laws**

- (a) The provision of information to an agricultural laborer does not in any way affect the liability of an employer with regard to the health and safety of a laborer or other person exposed to chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law.
- (b) The provision of information to an agricultural laborer does not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a chemical under any other provision of law.

#### **125.016. Complaints, Investigations, and Penalties**

- (a) Complaints received in writing from agricultural laborers or their designated representatives relating to alleged violations of this chapter by employers covered by this chapter shall be investigated in a timely manner by the department as provided by this section.
- (b) Officers or representatives of the department, on presentation of appropriate credentials, have the right of entry into any workplace at reasonable times to inspect and investigate complaints for purposes of determining compliance with this chapter.
- (c) The department shall complete an investigation of a complaint not later than 90 days after the date on which the complaint is filed. A hearing shall be conducted under Section 12.032 and an enforcement order issued, if appropriate, not later than 90 days after the date on which the investigation is completed. If it is necessary to commence an action relating to an alleged violation, the action must be commenced not later than 60 days after the date on which the investigation is completed.
- (d) After providing at least 14 days' written notice and an opportunity for a public hearing, the department may issue an enforcement order requiring any employer or chemical manufacturer covered by this chapter to comply with this chapter or rules adopted under this chapter. A public hearing held under this subsection is a



contested case under Chapter 2001, Government Code, and may be appealed under that chapter. In the case of a medical emergency, the department may issue an enforcement order immediately and shall provide the opportunity for a hearing on the order within 10 days after the date on which the order is issued.

- (e) In the case of a medical emergency, the department may sue in the name of the State of Texas to enjoin any violation of this chapter or a rule adopted or enforcement order issued by the department under this chapter.
- (f) If required under this chapter, employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation. This section does not affect any other right of an agricultural laborer, or any other person to receive compensation for damages under other law.
- (g) If required under this chapter, employers who proximately cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.
- (h) The department may request the attorney general to represent the department in any legal proceeding authorized under this chapter. An action for civil or criminal penalties or injunctive relief shall be brought in the county in which the alleged violation occurred or is occurring.
- (I) Each violation of this chapter or a rule adopted under this chapter constitutes a separate offense.

#### **125.017. Compliance with Hazard Communication Act**

- (a) If an employer is required to comply with the Hazard Communication Act (Article 5182b, Vernon's Texas Civil Statutes) and with this chapter, the employer is required to comply with only the Hazard Communication Act. However, if an agricultural laborer is not covered under the Hazard Communication Act, the employer shall comply with this chapter for those laborers not covered by the Hazard Communication Act.
- (b) If an employer is covered by both the Hazard Communication Act and this chapter, the employer is required to furnish a workplace chemical list under only one of those laws.

## **TEXAS RIGHT-TO-KNOW REGULATIONS**

### **CHAPTER 8. AGRICULTURAL HAZARD COMMUNICATION REGULATIONS**

The provisions of this Chapter 8 issued under the Agriculture Code, §125.014.

#### **§8.1. General Provisions**

- (a) Purposes. The purposes of these regulations are:
  - (1) to provide agricultural workers and their designated representatives with access to information regarding certain hazardous chemicals to which they may be exposed during their normal employment activities, during reasonably foreseeable emergency situations, or as a result of their close proximity to areas where those chemicals are used;
  - (2) to provide access to information regarding hazardous chemicals to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations in close proximity to residential areas, to provide the department with access to information regarding chemicals covered by the Act and these regulations, and to provide members of the community with information about hazardous chemicals used or stored in close proximity to their residences; and
  - (3) to provide treating medical personnel and authorized persons, including persons conducting epidemiological research, with access to information regarding chemicals covered by the Act and these regulations.
- (b) Compliance with the Hazard Communication Act. A covered employer shall comply with the requirements of the Act and this chapter except insofar as the Hazard Communication Act, Texas Civil Statutes, Article 5182b, provides equivalent requirements and the covered employer is in compliance with those requirements.
- (c) Compliance with the Federal Worker Protection Standard (WPS). The department, after review and comparison of the Act, these regulations, and the Federal Worker Protection Standard, 40 Code of Federal Regulations (CFR), Part 170 (WPS), has determined that the purpose of all these standards is to protect and communicate possible hazards to which agricultural laborers may be exposed in the work place. A covered employer shall comply with the requirements of the Act and these regulations. However, if an employer covered by the Act and these regulations complies with applicable provisions of WPS and the following additional and more



stringent requirements of these regulations, they will be considered to be in compliance with the Act and these regulations:

- (1) recognizing the use of a designated representative by an agricultural laborer as provided for in the Act and §8.5 of this title (relating to Designated Representative);
- (2) complying with requirements regarding the compilation, maintenance, and provision of the Workplace Chemical List (WCL) and attachments as provided in §8.7 of this title (relating to Workplace Chemical List);
- (3) obtaining a Material Safety Data Sheet from manufacturers and distributors in accordance with §8.6 of this title (relating to Material Safety Data Sheet (MSDS));
- (4) complying with §8.11(e)(3) of this title (relating to Training Program) which provides that a covered employer may not refuse to hire a laborer solely because the laborer has not completed a training program or cannot produce a training card;
- (5) providing and reading crop sheets to agricultural laborers in accordance with §8.8(b) of this title (relating to Crop Sheets) in absence of training and if they do not have a training card or they request it; and
- (6) complying with notification requirements to the local fire chief about chemicals stored for more than 72 hours as provided in §8.12 of this title (relating to Emergency Response).

## §8.2. Definitions

In addition to the statutory definitions, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

*Act*—The Agricultural Hazard Communications Act, the Agriculture Code, Title 5, Subtitle G, Chapter 125. (Also known as the Agricultural Right To Know Act.)

*Agricultural or horticultural commodity in its unmanufactured state*—An agricultural or horticultural commodity is in its unmanufactured state until the desirable portion of the agricultural plant is detached from its parent or the whole agricultural plant is separated from its growth media and removed from the work area. For horticultural commodities grown at the retail sales site, a commodity is in its unmanufactured state until it is sold and taken from the retail sales site.

*Covered pesticide chemical*—Any substance containing any element, chemical compound, or mixture of elements or compounds registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §136 et seq. This includes general, restricted, or state-limited-use products as packaged by the manufacturer.

*Crop sheet*—A document developed by the department to fulfill the requirements of the Act, §125.010.

*Department*—The Texas Department of Agriculture.

*Distribute*—Offer for sale, hold for sale, sell, barter, or supply.

*Distributor*—Any business, other than a chemical manufacturer that supplies covered pesticide chemicals to other distributors or to purchasers.

*Employer*—

(A) Any person who:

- (i) operates an agricultural establishment;
- (ii) contracts with the operator of an agricultural establishment in advance of, during, or after production to control or purchase a crop and uses a covered pesticide chemical on an agricultural or horticultural commodity in its unmanufactured state; or
- (iii) either directly or indirectly recruits, solicits, hires, employs, utilizes, furnishes, or supervises agricultural laborers.

(B) The term “agricultural establishment” as used in this chapter means a business operation that uses paid agricultural laborers in the production of an agricultural or horticultural commodity in its unmanufactured state.

(C) In no event is a labor agent, crewleader, or labor contractor considered to be an employer for purposes of these regulations or the Act. Where a labor agent, crewleader, or labor contractor is used, the employer is the person who uses or engages the services of the labor agent, crewleader, or labor contractor.

*EPA*—United States Environmental Protection Agency.

*Farm operator*—The person responsible for the overall control and management of the crop.

**Livestock**—Beef and dairy cattle, hogs, sheep, goats, poultry of all kinds, horses, rabbits, bees, exotic game animals, and fur-bearing animals in captivity.

**Medical emergency**—Any health or safety related occurrence in which information concerning a covered pesticide chemical is needed for immediate treatment or diagnosis of an injury or illness that appears to have been caused or aggravated by exposure to agricultural chemicals.

**Member of the community**—Any individual who resides, is employed, attends school, or is a parent of a child attending school, is treated in a hospital, or resides, or is treated in a nursing home within a 1/4-mile radius of a covered employer's work area.

**Migrant work**—Work performed by an individual who is required to be absent overnight from his permanent place of residence.

**Nursery worker**—

- (A) A laborer employed in a nursery operation, whether licensed or unlicensed, who is engaged in the following activities:
  - (i) sowing seeds and otherwise propagating shrubs, vines, flowers, and fruit, nut, shade, vegetable, and ornamental plants or trees;
  - (ii) handling such plants to and from fields; or
  - (iii) planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.
- (B) A worker involved solely in the retail aspect of a nursery operation or solely in a lawn care service is not considered a nursery worker for purposes of these regulations.

**Person**—Any individual, partnership, association, joint stock company, trust, cooperative, corporation, or other business entity.

**Produce**—The act of performing any of the activities specified in the definition of agricultural laborer found in §8.3 of this title (relating to Agricultural Laborer).

**Registrant**—Any person who has submitted an application for registration of a pesticide under the Texas Agriculture Code, Title 7, §§76.041-76.048.

**Safety emergency**—Any health or safety related occurrence designated as a safety emergency by a fire chief or his representative.

**Seasonal work**—Work of a seasonal or temporary nature. A worker who moves from one seasonal activity to another is employed on a seasonal basis even though he may continue to be employed during a major portion of the year. Work is other than seasonal if it is performed for a single employer essentially on a year round basis.

**Service**—The Texas Agricultural Extension Service.

**Store, storage**—To have at the work area for a period of time greater than 72 hours.

**Threshold amount**—Fifty-five gallons or 500 pounds as packaged by the registrant or an amount that the department determines by rule for certain highly toxic or dangerous chemicals.

**Trained trainers**—Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

**Treating medical personnel**—Doctor, nurse, emergency technician, clinic personnel, or hospital personnel treating an individual in connection with a possible exposure to a covered pesticide chemical.

**Uses**—Uses or causes to be used covered pesticide chemicals, or causes agricultural laborers to be present in a workplace where covered pesticide chemicals are used or stored.

**Work area**—A room, defined space, field, section, or farm where covered pesticide chemicals are stored or used and where agricultural laborers may be present. In a nursery or greenhouse, the work area is the defined treated or storage area within the nursery or greenhouse in which agricultural laborers are present.

**Workplace**—A geographical location containing one or more work areas.

**Work season**—Crop season.

**WPS**—Worker Protection Standard, 40 Code of Federal Regulations, Part 170.

### §8.3. Agricultural Laborer

- (a) The terms "agricultural laborer" or "laborer" as used in this chapter mean an individual who does one or more of the following activities at an agricultural establishment including a farm, a tree or sod farm, ranch, packing shed, greenhouse, or nursery:

- (1) plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state. "Agricultural laborer" includes, but is not limited to, field workers who plant, weed, thin, cultivate, detassel, hoe, irrigate, harvest, tie vines, nursery workers and workers who load trucks to take the commodity from the field to the packing shed, and workers at the packing shed who handle the commodity;
  - (2) uses a covered pesticide chemical as part of his duties as an agricultural laborer on the farm, including, but not limited to, mixing, loading, or applying a covered pesticide chemical;
  - (3) may be exposed to a covered pesticide chemical because of his or her job assignment which includes, but is not limited to, disposal of used pesticide containers on a farm, scouting, and flagging; or
  - (4) plants, cultivates, grows, harvests, detassels, rogues, or treats seeds or seed plants of an agricultural or horticultural commodity.
- (b) The definition of agricultural laborer does not include:
- (1) farm and ranch laborers working solely with livestock;
  - (2) persons working solely in the retail sales component of a business, such as salespersons, brokers, and marketing personnel;
  - (3) office workers, cooks, maintenance workers, security personnel, and nonresident management, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to a covered pesticide chemical;
  - (4) licensed commercial applicators and their employees in the normal circumstances where such an applicator is applying pesticides to the crop of some other entity. Employees of licensed commercial applicators working on an agricultural establishment owned or operated by that applicator are included within the definition of "agricultural laborer"; or
  - (5) workers involved in mechanical harvesting in which there is no substantial contact with the treated crop and where the relevant reentry interval has expired.

#### **§8.4. Covered Employer**

- (a) An employer is a "covered employer" if he annually uses or stores in excess of the threshold amount of any one covered pesticide chemical, and either:
- (1) himself, or through labor agents, hires agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is \$15,000 or more; or
  - (2) himself, or through labor agents, hires agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is \$50,000 or more.
- (b) An employer is a covered employer if he or she meets the minimum payroll requirements described in subsection (a)(1) or (2) of this section, and causes agricultural laborers to be present in a workplace(s) where the threshold amount of any one covered pesticide chemical is annually used or stored. An example of such an employer may be a packing shed or other entity which makes an agreement with a farmer to furnish agricultural laborers to produce a crop being produced at the farmer's farm. In such instances, the packing shed and the farmer would have the following responsibilities under the Act.
- (1) If the packing shed meets the minimum payroll requirement and covered pesticides in excess of the threshold amount are used or stored in the workplace(s) where the packing shed's agricultural laborers are present, the packing shed is responsible for complying with the requirements of these regulations for all of its employees that meet the definition of "agricultural laborer."
  - (2) The packing shed's responsibilities extend only to the agricultural laborers furnished by the packing shed and only to the work area(s) where these laborers are present.
  - (3) If the packing shed causes agricultural laborers to be present at more than one farm or work area, the covered chemicals used or stored at all such work areas will be totalled to determine whether more than the threshold amount is stored or used.
  - (4) The packing shed is free to secure the assistance of others in performing particular responsibilities. For instance, it may use crewleaders or foremen to read the crop sheets and it may arrange for farmers to help compile the workplace chemical lists. However, responsibility for compliance rests solely with the packing shed.
  - (5) The farmer in this example has no responsibility under the Act with respect to the packing shed's agricultural laborers.

- (6) The farmer is responsible for complying with the Act only if he or she standing alone is a covered employer. In other words, the packing shed's agricultural laborers are not counted in determining whether the farmer meets the minimum payroll test for coverage.
- (7) Even where the farmer is a covered employer, his or her only responsibility under the Act is with respect to those agricultural laborers whom he or she has hired directly or through a labor agent.
- (8) The coverage and responsibility described in this example is the same for other entities which furnish agricultural laborers to perform work on a farmer's farm, including seed producers who furnish laborers to rogue or detassel a seed crop, canneries or processors who furnish field laborers, and gins who furnish hoeing or weeding laborers.
- (c) Hiring "through labor agents" includes an employer who contracts with or utilizes a crewleader or labor contractor to provide harvesters or other agricultural laborers.
- (d) Amounts paid by an employer to a labor agent, crewleader, or labor contractor are considered part of the employer's gross annual payroll for purposes of subsection (a) of this section.
- (e) Where an employer uses or stores any covered pesticide chemicals in more than one work area or workplace, the total amount used in all such work areas and workplaces shall be counted to determine whether he or she annually uses in excess of 50 gallons or 500 pounds.
- (f) An employer who purchases in excess of 55 gallons or 500 pounds of a covered pesticide chemical at one time or within a period of one calendar year is presumed to have used or stored in excess of 55 gallons or 500 pounds of a covered pesticide chemical.

#### **§8.5. Designated Representative**

- (a) Representative designated by written authorization. A designated representative is an individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under the Act and this chapter.
- (b) Recognized or certified representatives.
  - (1) Certified collective bargaining agent. A certified collective bargaining agent is a person or unit that has been sanctioned by a governmental body to represent agricultural workers in matters of wages and working conditions. A certified collective bargaining agent is not required to have written authorization from the agricultural laborer he represents.
  - (2) Recognized collective bargaining agent. A recognized collective bargaining agent is a person or unit that has been acknowledged in a collective bargaining contract between an employer and an agricultural laborer. A recognized collective bargaining agent is not required to have a written authorization from the agricultural laborer he represents in order to exercise the laborer's rights under the Act.
  - (3) Certified designated representative. A certified designated representative is a person who has been approved for certification by the department. In order to become a certified designated representative, an individual or organization shall submit a request for certification as a designated representative to the department. The request shall include the requester's name and address, the name of the agricultural laborer's employer, the address of the agricultural laborer's employer, if known, and a description of which of the laborer rights under the Act the designated representative intends to exercise. The laborer's written authorization shall be attached to the request and processed by the department as follows.
    - (A) The department shall review the request and determine whether to accept or reject it within two business days after receipt. If the department determines that the request fulfills the requirements of the Act and these regulations the department shall certify the requester as a designated representative. The designated representative remains certified until the agricultural laborer notifies the department that he or she has withdrawn his or her authorization. If the department rejects the request, the department shall notify the requester of the decision and give a statement of the reasons for the rejection. A person whose request has been rejected may attempt to address the reasons for rejection and ask that the request be reconsidered. Alternatively, the requester may appeal the rejection to the commissioner. A person not satisfied with the decision of the commissioner may appeal in the manner provided for contested cases under the Texas Administrative Procedure Act.
    - (B) A certified designated representative is not required to reveal to anyone other than the department the identity of the agricultural laborer he or she represents. The department shall maintain the laborer's anonymity, unless the laborer waives it.
    - (C) A covered employer shall recognize a requester as a designated representative after receiving notice of certification by the department.



### **§8.6. Material Safety Data Sheet (MSDS)**

- (a) Defined. An MSDS is a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document. In the case of a chemical labeled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §136 et seq., for which an MSDS is both unavailable and not required under the federal OSHA hazard communication standard, a product label, or other document equivalent to an MSDS, which contains precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements, may serve as an MSDS.
- (b) Responsibilities of manufacturers and distributors.
- (1) A registrant, chemical manufacturer, or distributor shall provide the most current appropriate MSDS, product label, or equivalent documentation to any person in this state to whom he distributes a covered pesticide chemical.
  - (2) A chemical manufacturer or distributor shall provide, in a timely manner, the most current appropriate MSDS to covered employers upon request.
  - (3) A registrant or chemical manufacturer shall ensure that all MSDSs for all covered pesticide chemicals he or she distributes are correct and current.
  - (4) A registrant shall provide with his or her registration application a copy of the most current appropriate MSDS for each pesticide for which he or she is applying for registration.
  - (5) A chemical manufacturer or distributor shall submit to the department a copy of the most current appropriate MSDS for all fertilizers with covered pesticide chemicals.
  - (6) Retail outlets that distribute pesticide chemicals to the general public only for nonagricultural purposes are exempted from this section.
- (c) Responsibilities of covered employers.
- (1) A covered employer is responsible for obtaining and maintaining the most current appropriate MSDS, product label, or equivalent documentation for each covered pesticide chemical he or she buys, applies, or causes another to apply.
  - (2) A covered employer who has not been provided with an MSDS for a covered pesticide chemical shall request the most current appropriate MSDS product label, or equivalent documentation in writing from the manufacturer or distributor in a timely manner.
  - (3) A covered employer shall make an MSDS, product label, or equivalent documentation for covered pesticide chemicals accessible to agricultural laborers, designated representatives, treating medical personnel, members of the community, the department, and emergency personnel in the same manner as the workplace chemical list is to be made accessible to those persons in §8.7(c) of this title (relating to Workplace Chemical List).

### **§8.7. Workplace Chemical List**

- (a) Defined. A workplace chemical list (WCL) is a form that must be completed with the information required by the Act, §125.004 and §125.005. In order to determine whether the covered pesticide chemical must be listed, a covered employer shall total the quantities of pesticide products containing the same active ingredient to determine whether more than the threshold amount of any covered pesticide chemical is actually used or stored annually in the workplace. In order to determine total quantities when both liquid and dry formulations of a covered pesticide chemical have been used or stored the covered employer shall convert pounds to gallons or gallons to pounds using the ratio 9.09 pounds/gallon or .11 gallon/pound. The following documents or information shall be attached to the workplace chemical list:
- (1) the MSDS for each chemical listed on the workplace chemical list, or in the case for which an MSDS is both unavailable and not required under the federal OSHA hazard communication standard, a product label, or equivalent documentation;
  - (2) crop sheets and other health and safety data provided by the department that the covered employer has been required to distribute to his agricultural laborers; and
  - (3) an estimate of the amount of the product applied and estimate of the number of acres treated. The department's workplace chemical list form will include a space in which the covered employer may provide this information.
- (b) Responsibility to compile and maintain a workplace chemical list.
- (1) The department shall prescribe a form for the workplace chemical list required by the Act. The form shall include places in which a covered employer shall list the name of the crop(s), the product name of all

covered pesticide chemicals that are applied to the crop and/or stored at the workplace in excess of the threshold amount, the locations and dates of the application of all covered pesticide chemicals used, and the storage locations of the covered pesticide chemicals at the workplace. The department may approve a computerized format if the format fulfills the requirements of the Act.

- (2) A covered employer shall compile and maintain a workplace chemical list for covered pesticide chemicals as specified in subsection (a) of this section.
  - (3) The covered employer may choose to maintain a single list for each crop, each work area, or each workplace, provided that the list contains sufficient information to identify the date and location of pesticide application(s) and the name(s) of the pesticide(s) applied.
  - (4) If the list is compiled by workplace containing various work areas in different counties, copies of the list shall be kept at the place of business closest to the work area.
  - (5) The covered employer is responsible for obtaining the workplace chemical list form from a department regional office and is not relieved of his duties under the Act and these regulations because he or she has not received a form from the department.
  - (6) A covered employer's responsibility to maintain a workplace chemical list includes the entering of information regarding the application of covered pesticide chemicals as they are applied, used, or stored in excess of the amounts specified in subsection (a) of this section.
  - (7) The covered employer shall either:
    - (A) maintain workplace chemical lists and attachments at the principal place of business in Texas for 30 years; or
    - (B) file workplace chemical lists and attachments with the department annually.
  - (8) Any covered employer who wishes to file these records with the department shall include the covered employer's identification number. Records should be sent to the Texas Department of Agriculture, Right To Know Program, P.O. Box 12847, Austin, Texas 78711. Records for each calendar year shall be filed by January 31 of the following year. The department shall issue a receipt acknowledging records have been received from the covered employer.
  - (9) If the department determines that a covered employer repeatedly fails to maintain the workplace chemical list and its attachments as required, the department may require the covered employer to annually file the list and attachments with the department.
  - (10) If a workplace ceases to be used for the agricultural activities for which the workplace chemical list and attachments are required, the covered employer shall send the workplace chemical lists and attachments to the Texas Department of Agriculture, Right To Know Program, P.O. Box 12847, Austin, Texas 78711.
  - (11) If the agricultural activities for which the workplace chemical list and attachments are maintained continue at a workplace but the covered employer is succeeded or replaced in function by another person, the successor shall comply with the provisions of this subsection. The successor is not liable for violations of the Act or this chapter committed by his predecessor unless the transaction(s) leading to the transfer were undertaken for the purpose of avoiding responsibility for violations of the Act or these regulations.
  - (12) A licensed commercial applicator may satisfy the obligations to keep records under the Texas Pesticide Control Act, §76.114, and the Texas Pesticide Regulations, §7.18, and to maintain the workplace chemical list by maintaining a single record, provided that the records maintained comply with all of the requirements of this section as well as of §7.18 of this title (relating to Records). The department will develop a form for the workplace chemical list which satisfies the recordkeeping requirements for applicators.
- (c) Access to the workplace chemical list.
- (1) A covered employer shall make the workplace chemical list and attachments accessible to an agricultural laborer, a designated representative, treating medical personnel, or a member of the community. The term "accessible" as used in these regulations means:
    - (A) in nonemergency situations, the term "accessible" means that the documents or information shall be provided to a requester for reading or copying, within a reasonable period of time, but in no event more than five normal working days from the time of a reasonable request. The term "reasonable request" as used in this section means a request made orally or in writing either directly to the covered employer, a managerial or supervisory employee employed by the covered employer's place of business, or an employee designated by the covered employer to receive such requests during normal working hours at the workplace or the employer's place of business;

- (B) in the case of a medical or safety emergency, the term "accessible" means that the document or information shall be given immediately to requester authorized by the Act and this chapter regardless of when the request is made.
- (2) A designated representative or treating medical personnel is not required to identify the agricultural laborer he or she represents or is treating.
  - (3) Before a covered employer allows an agricultural laborer to work with a covered pesticide chemical or in a work area where a covered pesticide chemical is used or stored, the covered employer shall inform the agricultural laborer orally or in writing of the existence of the workplace chemical list and its location.
  - (4) If the covered employer has filed the workplace chemical list with the department, he or she shall inform the requester that the requested workplace chemical list is available from the department and provide the department's address.
  - (5) If a covered employer refuses to make accessible the workplace chemical list and attachments to a designated representative, treating medical personnel, or member of the community, that person may notify the appropriate regional office of the department of his or her request and of the covered employer's refusal.
  - (6) When the department is notified that a covered employer has refused to provide a copy of the workplace chemical list and attachments to a designated representative, or member of the community, the department shall, within two working days from the day of receiving the notice, request the covered employer to provide the department with the list and attachments. The department's request to the covered employer may be either oral or written.
  - (7) If the department, on behalf of a designated representative, requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 24 hours of the request.
  - (8) If the department, on behalf of a member of the community, requests a copy of the workplace chemical list and attachments from the covered employer, the covered employer shall provide the copy to the department within 14 days of the request.
  - (9) A covered employer may not refuse to provide the workplace chemical list form and attachments to an employee or treating medical personnel.
- (d) The department workplace chemical list files.
- (1) The department may request a copy of any workplace chemical list and attachments from any covered employer.
  - (2) The department shall maintain and preserve the data from each workplace chemical list and attachments filed for 30 years.
  - (3) The department shall make this data available upon request to an agricultural laborer, designated representative, member of the community, treating medical personnel, and other medical and health care personnel.

## **§8.8. Crop Sheets**

- (a) Development of crop sheets.
- (1) The department shall develop crop sheets which contain information relevant to specific crops including pesticides most commonly used on the crop, the acute and chronic health effects of these pesticides, ways to minimize pesticide exposure, recommended medical emergency measures, and agricultural laborers' rights.
  - (2) For purposes of developing crop sheets and complying with other provisions of the Act and this chapter, the department will consider each of the following logical groupings to be a single crop:
    - (A) nursery stock; and
    - (B) citrus.
  - (3) The information on the crop sheets shall be provided in both English and Spanish.
  - (4) The department may provide crop sheets in other languages commonly used by agricultural laborers who work with a particular crop.
  - (5) The department shall annually provide to each covered employer copies of appropriate crop sheets for crops grown in the relevant region. If a covered employer has not received a crop sheet for any crop that he grows, the covered employer shall request appropriate crop sheets from the local district office of the department or the service.
  - (6) The department shall update and distribute crop sheets as significant new information becomes available.



(b) Providing and reading crop sheets to laborers.

- (1) A covered employer shall provide an appropriate crop sheet and ensure that the information on the crop sheet designated by the department is read to each agricultural laborer including each laborer assigned to a new crop. This information shall be read in either Spanish or English, as appropriate. The most current crop sheets for the crops the laborer will be working with shall be provided and read on the first day of the work season or the first day the laborer begins employment, whichever is later. For nursery or greenhouse workers, the work season shall be deemed to run from January 1-December 31 of each calendar year. The covered employer shall provide and ensure that the appropriate information on the crop sheet is read prior to the time the laborer begins to work.
  - (2) A covered employer may comply with his or her obligation under paragraph (1) of this subsection to ensure that the appropriate information is read by playing to the laborers a tape recording of the information which is required to be read.
  - (3) A covered employer shall inform those agricultural laborers to whom he is required to read a crop sheet, including each laborer who is assigned to a different crop or job, of the product name of the covered pesticide chemical, the date and time it was last applied or is scheduled to be applied to the work area, and the expiration date of its reentry interval, except that such information is not required to be provided to those agricultural laborers who are not field laborers. An example of this type of agricultural laborer is a packing shed worker that works only in the shed.
  - (4) A covered employer does not have to provide or read the crop sheet or provide the information described in paragraph (3) of this subsection to agricultural laborer(s) who have a card issued under the Act, §125.009(g), except that the crop sheets are required to be provided to any agricultural laborer upon request.
  - (5) A covered employer shall provide crop sheets and the information described in paragraph (3) of this subsection to any agricultural laborer upon the laborer's request for a crop sheet.
  - (6) A covered employer may comply with the requirements of paragraph (1) of this subsection for its agricultural laborers that are not field workers, by posting in a conspicuous place at the work area a replica of the crop sheet for crops which are handled by those laborers. The posters must be at least 14 inches by 22 inches and must contain all of the information included on the crop sheet(s) for crops handled by those laborers.
- (c) A covered employer shall offer to each agricultural laborer, on the day on which the laborer is given his first pay for that work season, basic safety and health-related information provided to the employer by the department.

**§8.9. Providing Protective Clothing, Equipment, and Devices**

A covered employer shall provide for use and at no cost to each agricultural laborer employed by him or her any protective clothing, equipment, or device that is specified on the label for the activities in which the agricultural laborer is engaged as part of his duties. If the label does not specify protective clothing, then the covered employer shall provide the protective clothing, equipment, or device specified in the most current appropriate MSDS, crop sheet, or as provided in §7.25 of this title (relating to Scope of Pesticide Application Standards), whichever is more protective. This section does not require that the covered employer provide the long sleeve shirts, pants, shoes, and socks customarily provided by the agricultural laborers.

**§8.10. Retaliation**

- (a) A covered employer, employer's representative, labor agent, or crewleader may not take any retaliatory actions against any agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted the department's inspectors, instituted any proceeding under or related to the Act or this chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under the Act or this chapter on behalf of himself or herself or on behalf of others. Under this section retaliatory actions include discharge, causing to be discharged, discipline, or adversely affecting the agricultural laborer's pay, position, seniority, or other benefits.
- (b) An employer may not ask or require an agricultural laborer, as a condition of his or her employment, to waive any of his rights under the Act and these regulations.

**§8.11. Training Program**

- (a) Development of training program. The department, in conjunction with the service, shall develop an ongoing training program for agricultural laborers.



(b) Training provided by the department.

- (1) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The counties are as follows: Bexar, Cameron, Dawson, Fort Bend, Gaines, Gonzales, Hale, Hidalgo, Lamb, Lubbock, Smith, Starr, and Terry.
- (2) The department shall provide training in the following additional counties which it has determined as having a significant farm labor work force: Castro, Deaf Smith, Floyd, Frio, Hockley, Pecos, Uvalde, Willacy, and Zavala.
- (3) As part of the training program, and when possible, the department shall provide agricultural laborers with appropriate crop sheets and reentry information.

(c) Training provided by the service. The service shall provide training in all remaining counties.

(d) Notification of training. The department or the service shall notify agricultural laborers on a regular basis of the availability of training programs.

(e) Training provided by others. For purposes of these regulations and the Act, §125.009(e), covered employers and their managers or their labor contractors may train employees if the covered employers and their managers or labor contractors are certified applicators or trained trainers.

- (1) Agricultural laborers trained in a state other than Texas, and possessing a current EPA WPS training verification card, will be considered trained for purposes of the Act and these regulations.
- (2) Worker training programs which meet the minimum requirements of the WPS worker training are approved for workers who work under conditions specified under WPS, 40 CFR Part 170.130. Workers having completed this training are considered trained under the Act and these regulations.
- (3) Handler training programs which meet the minimum requirements of the WPS handler training are approved for handlers who work under conditions specified under WPS 40 CFR Part 170.230. Handlers having completed this training are considered trained under the Act and these regulations.

(f) Certification of completion of training.

- (1) When an agricultural laborer completes a training program, the trainer shall provide him or her with an EPA training verification card for WPS training.
- (2) The training agency and the training individual shall comply with the following requirements:
  - (A) maintain a record for five years of all agricultural laborers who complete the training program and are given a department-issued EPA WPS training verification card. These records must include at least a copy of each dated class roster signed by the trainer and each trainee, showing the verification card number issued to the trainee, and the city or county and state where the training occurred;
  - (B) issue EPA WPS training verification cards only to trainees who have been trained in accordance with the requirements of the WPS, including the correct use of training materials developed or approved by EPA;
  - (C) record trainee information on the verification cards, in ink or other indelible form;
  - (D) issue EPA WPS training verification cards that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and
  - (E) promptly respond to requests from EPA, state or tribal agencies or covered employers for information concerning issued EPA WPS training verification cards.
- (3) A covered employer shall not refuse to hire an agricultural laborer solely because the laborer has not completed a training program or cannot produce a card.

(g) Access to training materials by covered employers.

- (1) The department shall prepare appropriate training materials for covered employers, their managers, and their labor contractors to be used for training purposes. For the purposes of compliance with these regulations, the department has determined that the EPA WPS training program for agricultural workers and pesticide handlers meets or in some instances exceeds training requirements of the Act and these regulations.
- (2) These training materials may be obtained from sources identified and approved by EPA for use in WPS trainings.

## **§8.12. Emergency Response**

### **(a) Covered employers.**

- (1) A covered employer who normally stores covered pesticide chemicals within 1/4 mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place the name(s) and telephone number(s) of a knowledgeable representative(s) of the covered employer who can be contacted for further information or in case of an emergency. This information shall be in writing.
- (2) A covered employer, upon reasonable request, shall provide a copy of the workplace chemical list and attachments to the fire chief having jurisdiction over the storage place.
- (3) A covered employer shall notify the fire chief of any significant changes in any workplace chemical list including changes in the types of covered pesticide chemicals being stored, a substantial increase in the volume of covered pesticide chemicals, a change in the storage location of covered pesticide chemicals, or a change in the identity of the employer's representative.
- (4) A covered employer shall allow the fire chief having jurisdiction over the storage place, or his representative, upon reasonable request, to conduct on-site inspections of the chemicals on the workplace chemical list to prepare fire department emergency response activities.

### **(b) Other farm operators and other entities.**

- (1) Farm operators who are not covered employers and other entities who normally store covered pesticide chemicals in an amount in excess of 55 gallons or 500 pounds within 1/4 mile of a residential area composed of three or more private dwellings shall provide to the fire chief having jurisdiction over the storage area, in writing, the name(s) and telephone number(s) of a knowledgeable representative(s) of the farm operator or other entity who can be contacted for further information, or in case of an emergency. The 55 gallon or 500 pound threshold amount shall be based upon the sum of all covered pesticide chemicals normally stored.
- (2) Entities covered by this provision include other farm operators who are not covered employers, commercial and noncommercial applicators, pesticide dealers, chemical manufacturers, chemical distributors, and storage facilities.

## **§8.13. Expiration Provision**

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

*Educational programs of the Texas Agricultural Extension Service are open to all people without regard to race, color, sex, disability, religion, age or national origin.*

Issued in furtherance of Cooperative Extension Work in Agriculture and Home Economics, Acts of Congress of May 8, 1914, as amended, and June 30, 1914, in cooperation with the United States Department of Agriculture. Zerle L. Carpenter, Director, Texas Agricultural Extension Service, The Texas A&M University System.

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CHEM